

No. 2538

See papers in 2535
United States

Circuit Court of Appeals

For the Ninth Circuit.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,
Appellants,
vs.
CECIL C. CARTER,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

Filed

JAN 23 1915

F. D. Monckton,
Clerk.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Appellants:

JOS. K. HUTCHINSON, Esq., 923 First National Bank Building, San Francisco, California; and

CHAS. W. SLACK, Esq., 923 First National Bank Building, San Francisco, California.

For Appellee:

H. L. CLAYBERG, Esq., 937 Pacific Building, San Francisco, California;

Messrs. CLAYBERG & WHITMORE, 937 Pacific Building, San Francisco, California; and

R. P. HENSHALL, Esq., Los Angeles, California. [3*]

[Citation on Appeal (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Cecil C. Carter, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern District of California, Southern Division, wherein Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson are appellants, and you are appellee, to show cause, if any there be, why the

*Page-number appearing at foot of page of original certified Record.

decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable BENJAMIN F. BLEDSOE, United States District Judge for the Southern District of California, this 26 day of December A. D. 1914.

BENJAMIN F. BLEDSOE,
United States District Judge.

Due service and receipt of a copy of the within Citation on Appeal this 28th day of December, 1914, hereby admitted.

H. L. CLAYBERG,
CLAYBERG & WHITMORE,
Solicitors for Complainant.

[Endorsed]: No. B. 58—Equity. United States District Court for the Southern District of California. Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, Appellants, vs. Cecil C. Carter, Appellee. Citation on Appeal. Filed Dec. 29, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [4]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. B. 58—EQUITY.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants. [5]

*In the District Court of the United States, Southern
District of California.*

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Bill in Equity.

Now comes the above-named complainant and for cause of action against defendants above named complains and alleges:

That complainant is now, and at all times hereinafter stated, was a citizen of the United States and of the State of Oregon, and a resident of the State of Oregon; that the defendants Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, and each

of them, now are, and at all times hereinafter mentioned were citizens of the United States and of the State of California, and residents of the State of California; that the amount in controversy between the plaintiff and defendants herein in this action exceeds, exclusive of costs and interest, the sum of Three Thousand Dollars (\$3,000.00); that the real estate and placer mining claims affected by this suit are situate in San Bernardino County, State of California, that neither the said complainant nor the said defendants, or neither of them, are now, nor for a long time prior to the commencement of this suit, have they or either of them been in the actual possession of the said placer mining claims, hereinafter particularly described. [6]

I.

That during the year 1910, complainant's predecessor in interest, P. Perkins, jointly with one H. C. Fursman, W. Huff, H. A. Baker, E. Thompson, R. Waymire, D. Smith and defendant, Thos. W. Pack, duly located and recorded one hundred and seventy-five certain placer mining claims, hereinafter more particularly described, situate in and upon Searles Borax Lake, County of San Bernardino, State of California; that complainant is now, and ever since the 28th day of November, 1914, as hereinafter recited, has been the owner and holder of a one-eighth undivided interest in and to the said placer mining claims, and each of them; that the said placer mining claims above referred to are more particularly described, named and numbered as follows, and are more fully described in said notices of loca-

tions, copies whereof are recorded in the office of the County Recorder of San Bernardino County, State of California, in Volume 82 of Mining Records, at the pages of said volume hereinafter designated following the respective names of said placer mining claims, to wit:

- "The Soda No. 1 Placer Mining Claim," at page 131 thereof;
- "The Soda No. 2 Placer Mining Claim," at page 131 thereof;
- "The Soda No. 3 Placer Mining Claim," at page 132 thereof;
- "The Soda No. 4 Placer Mining Claim," at page 132 thereof;
- "The Soda No. 5 Placer Mining Claim," at page 133 thereof;
- "The Soda No. 6 Placer Mining Claim," at page 133 thereof;
- "The Soda No. 7 Placer Mining Claim," at page 134 thereof;
- "The Soda No. 8 Placer Mining Claim," at page 134 thereof;
- "The Soda No. 9 Placer Mining Claim," at page 135 thereof;
- "The Soda No. 10 Placer Mining Claim," at page 135 thereof;
- "The Soda No. 11 Placer Mining Claim," at page 136 thereof;
- "The Soda No. 12 Placer Mining Claim," at page 136 thereof;
- "The Soda No. 13 Placer Mining Claim," at page 137 thereof;
- "The Soda No. 14 Placer Mining Claim," at page 137 thereof;
- "The Soda No. 15 Placer Mining Claim," at page 138 thereof;
- "The Soda No. 16 Placer Mining Claim," at page 138 thereof;
- "The Soda No. 17 Placer Mining Claim," at page 139 thereof;
- "The Soda No. 18 Placer Mining Claim," at page 139 thereof;
- "The Soda No. 19 Placer Mining Claim," at page 140 thereof;
- "The Soda No. 20 Placer Mining Claim," at page 140 thereof;
- "The Soda No. 21 Placer Mining Claim," at page 141 thereof;
- "The Soda No. 22 Placer Mining Claim," at page 141 thereof;

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- "The Soda No. 23 Placer Mining Claim," at page 142 thereof;
- "The Soda No. 24 Placer Mining Claim," at page 142 thereof;
- "The Soda No. 25 Placer Mining Claim," at page 143 thereof;
- "The Soda No. 26 Placer Mining Claim," at page 143 thereof;
- "The Soda No. 27 Placer Mining Claim," at page 144 thereof;
- "The Soda No. 28 Placer Mining Claim," at page 187 thereof;

- "The Soda No. 29 Placer Mining Claim," at page 195 thereof;
- "The Soda No. 30 Placer Mining Claim," at page 218 thereof;
- "The Soda No. 31 Placer Mining Claim," at page 187 thereof;
- "The Soda No. 32 Placer Mining Claim," at page 146 thereof;
- "The Soda No. 33 Placer Mining Claim," at page 147 thereof;
- "The Soda No. 34 Placer Mining Claim," at page 147 thereof;
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- "The Soda No. 81 Placer Mining Claim," at page 171 thereof;
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"The Soda No. 138 Placer Mining Claim," at page 199 thereof;
"The Soda No. 139 Placer Mining Claim," at page 200 thereof;

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"The Soda No. 140 Placer Mining Claim," at page 200 thereof;
"The Soda No. 141 Placer Mining Claim," at page 201 thereof;
"The Soda No. 142 Placer Mining Claim," at page 201 thereof;
"The Soda No. 143 Placer Mining Claim," at page 202 thereof;
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"The Soda No. 212 Placer Mining Claim," at page 215 thereof;
"The Soda No. 213 Placer Mining Claim," at page 215 thereof;

“The Soda No. 214 Placer Mining Claim,” at page 216 thereof;
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“The Soda No. 216 Placer Mining Claim,” at page 217 thereof;
“The Soda No. 217 Placer Mining Claim,” at page 217 thereof;
“The Soda No. 218 Placer Mining Claim,” at page 218 thereof;

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II.

That on or about the 10th day of June, 1912, said P. Perkins, one of the original locators of said above described placer mining claims and the then holder and owner of a one-eighth undivided interest in and to said placer mining claims, together with Sylvia Perkins, his wife, transferred and deeded, for a valuable consideration, all of his said undivided one-eighth interest in and to said above described placer mining claims to one F. Kimball; that said deed was, on or about the 30th day of November, 1914, placed on record and recorded in Vol. 557 of deeds, at page 339 thereof, in the files and records of the office of the County Recorder of the County of San Bernardino, State of California; that on or about the 20th day of November, 1914, the said F. Kimball transferred and deeded for a valuable consideration all of the said one-eighth undivided interest in and to said above described placer mining claims, to this complainant; that said deed was, on or about the 7th day of December, 1914, placed on record and recorded in Vol. — of deeds, at page — thereof, in the files and records of the office of the County Recorder of the County of San Bernardino, State of California. That complainant is now, and ever since said 28th day of November, 1914, has been the owner and holder of said one-eighth undivided interest in

and to said above described placer mining claims, and the same now, at the date of the filing of this bill of complaint, stand of record in his name. [11]

III.

That some months prior to the commencement of this suit, and prior to the date of the service of the alleged Notice of Forfeiture, as hereinafter recited, the exact date of which is to this complainant unknown, complainant's predecessor in interest, the said P. Perkins, died in the State of Colorado; that at the time of his death, and for a long time prior thereto, the said P. Perkins was a resident and citizen of the State of Colorado; that as complainant is informed and believes, an administrator has been appointed in the State of Colorado to administer his estate, and that his estate is now in course of administration in said State of Colorado;

IV.

That during the month of September, 1914, the above-named defendants, as complainant is informed and believes, caused to be served upon the administrator, personal representative, executors or heirs of complainant's predecessor in interest, the said P. Perkins, a paper which purports to be a Notice of Forfeiture, a copy of which said so-called "Notice of Forfeiture" as complainant is informed and believes, is hereto attached, marked Exhibit "A" and made a part hereof. That in and by said pretended Notice of Forfeiture it appears that all of complainant's right, claim, title and interest and the right, title and interest of complainant's predecessors in interest, their administrators, representatives, heirs

and assigns, in and to the said one hundred and seventy-five above described placer mining claims, and each thereof, will be forfeited and a cloud cast upon complainant's title thereto within ninety days from the date of service of said so-called Notice of Forfeiture, as aforesaid, unless complainant or his predecessors in interest or their representatives, within said ninety days, pay to defendant, [12] Joseph K. Hutchinson, for said defendants, the sum of \$700.00 claimed to be one-eighth of the total amount of money claimed to have been expended by said defendant Paek upon said claims in the years 1911 and 1912 as recited in said pretended notice of forfeiture (Exhibit "A").

V.

Complainant alleges that the said defendant, Thos. W. Paek, did not expend, or cause to be expended during the years 1911 and 1912, or during any other year, or at any other time, or at all, the sum of \$5,600.00, or any part or portion thereof, or any other sum or sums or any sum at all of his own money or funds upon said one hundred and seventy-five above described placer mining claims, or upon any of them, or upon any placer mining claim or claims located and recorded by the predecessor in interest of this complainant, the said P. Perkins, or by the said P. Perkins and others, or in which this complainant or his predecessors in interest had or has any interest, in the County of San Bernardino, State of California, or elsewhere, for labor and improvements, or for labor or improvements thereupon, or upon any of them, or for any purpose whatsoever, or at all.

Complainant further alleges that the said Thos. W. Pack did not expend or cause to be expended, during the years 1911 and 1912, or during any other year, or at any other time, or at all, the sum of \$100.00 or any part or portion thereof, of his own money or funds, or any other sum or sums, or any sum at all, upon each, or upon any or all of said above described one hundred and seventy-five placer mining claims, or upon any placer mining claim or claims, located and recorded by complainant's predecessor in interest, the said P. Perkins, or by the said P. Perkins and others, or in which this complainant or his predecessors in interest had or has any interest in the County of San Bernardino, State of California, or elsewhere for labor and improvements, [13] or for labor or improvements thereupon, or upon any of them, or for any purpose whatsoever, or at all.

VI.

That said pretended Notice of Forfeiture does not, in any way, describe the kind, character or nature of the pretended labor and improvements, claimed to have been done and performed upon said claims, or any of them during the year 1912, by the said Thos. W. Pack.

That complainant is unable to ascertain from said pretended Notice of Forfeiture whether the said defendant Pack claims to have actually expended, of his own money or funds, in labor and improvements, or in labor or improvements, upon each of said placer mining claims, the said sum of \$100.00, or the sum of \$5,600.00 upon all of them, or any

other sum or amount, or whether the said defendant Pack claims to have expended such money in the transportation of men and supplies to Searles Borax Lake for the purpose of having done upon each and all of said placer mining claims the annual representation work for the years 1911 and 1912; that complainant cannot ascertain from the said pretended Notice of Forfeiture whether the amounts claimed to have been expended by said defendant Pack of his own money or funds upon said placer mining claims, or upon any of them, if he ever expended any money at all thereon, was the value of \$100.00 for each claim, or of the value of \$5,600.00 for all, or whether such labor and improvements, or labor or improvements increased the value of each of said claims in the sum of \$100.00, or the value of them all in the sum of \$56,000.00, or whether said pretended labor and improvements, or labor or improvements, tended in any way to develop any or all of said placer mining claims, or increased or aided in availability for taking ores or minerals from said claims, or from any of them; [14]. that this complainant further alleges upon information and belief that the said defendant Pack, if he expended any of his own money or funds pretending to be for or in the representation of said placer mining claims, or any of them, for the years 1911 and 1912 expended a greater part or portion, or all of such money, in the transportation of men and supplies to Searles Borax Lake, San Bernardino County, California, where said placer mining claims are located, as aforesaid, and in furnishing and supplying food, wear-

ing apparel, delicacies and luxuries to the men so transported to said Searles Borax Lake for the purpose of performing said representation work during said year upon said claims.

That said pretended notice is executed, made and signed by defendants Thos. W. Pack, S. Schuler and Joseph K. Hutchinson; that the same discloses upon its face that neither the said Schuler or the said Hutchinson, or either, or both of them, had any interest or ownership in or to the said placer mining claims mentioned therein, or on or to any part or portion of them, during the years 1911 and 1912, or during the time it is claimed Thos. W. Pack expended money for labor and improvements thereon, and that neither the said S. Schuler, or the said Joseph K. Hutchinson ever expended, or caused to be expended the money named in said pretended Notice of Forfeiture, or any money thereon;

VII.

That on or about the 25th day of December, 1913, defendant S. Schuler made, executed, acknowledged and delivered her deed and conveyance to one J. A. Shellito, whereby she transferred and conveyed to said J. A. Shellito all of her right, title and interest in and to said above-described placer mining claims, together with her right, title and interest in and to certain other placer mining claims, therein described; that thereafter and on [15] or about the 14th day of January, 1914, the said defendant Schuler assumed to convey to defendant Hutchinson the same interest and property that she, the said defendant Schuler, had theretofore conveyed to the

said J. A. Shellito, as hereinbefore alleged; that the said defendant Hutchinson, at the time of receiving said conveyance was fully informed and had full knowledge that the said defendant Schuler had conveyed all the rights, interests, claims and property therein described to the said J. A. Shellito, a long time prior to the execution of said conveyance by said Schuler to said Hutchinson; that complainant further alleges that the said Hutchinson took said conveyance from the said defendant Schuler for the sole and only use and benefit of the Foreign Mines and Development Company, the American Trona Company and the California Trona Company, or for all or a part of them, and not for his own use and benefit, and for pursuance of a combination and conspiracy by and between these defendants in this suit and the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, wherein and whereby the said defendants, and the said above-named corporations confederated and combined together to injure complainant and his predecessors in interest, and to deprive and defraud them of all their right, title and interest in and to said above-described placer mining claims.

VIII.

Complainant further alleges upon his information and belief that the pretended transfer of the said one-eighth interest of the said Thos. W. Pack in and to these said above-described claims by the said S. Schuler to the said Joseph K. Hutchinson, if such transfer was made at all, as set forth in said pre-

tended Notice of Forfeiture, was made and done pursuant to and in order to carry out a combination and conspiracy to [16] injure complainant and his predecessors in interest and to deprive and defraud them of all of their right, title and interest in and to said placer mining claims and each and all of them; that the said pretended transfer to the said Joseph K. Hutchinson by the said S. Schuler was made and done, if made and done at all, wholly and totally without a valuable or other consideration; that if any consideration at all was paid by the said Joseph K. Hutchinson to the said S. Schuler for the said transfer, the same was advanced and paid by the Foreign Mines and Development Company, a corporation, or by the American Trona Company, a corporation, or by the California Trona Company, a corporation, or by part or all of them, or by some person or persons authorized by them, or part or all of them or acting for them, or for part or all of them and on their behalf, or on the behalf of part or all of them; that the said Joseph K. Hutchinson took the title to the said one-eighth interest in and to these said above-described claims, if he took the title at all, for the sole benefit and use of the said Foreign Mines and Development Company, or the American Trona Company, or the California Trona Company, or for part or all of them, and not for his own use and benefit; that the said Joseph K. Hutchinson now claims to hold the said title to the said one-eighth interest in and to the said above-described claims, if such title ever passed to him, for the sole and only use and benefit of the said

Foreign Mines and Development Company, the said American Trona Company, the said California Trona Company, or for the sole use and benefit of part or all of them, and not for his own use and benefit.

Complainant further alleges that the Foreign Mines and Development Company, the American Trona Company and the California Trona Company claim rights and interest in and to the mineral lands covered by said placer locations so made and recorded by complainant's [17] predecessors in interest the said P. Perkins and others, as hereinabove alleged, and that said Foreign Mines and Development Company, the American Trona Company and the California Trona Company have for some years last past been endeavoring to defeat the locations so made by the said P. Perkins and others, as hereinabove alleged, and that the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company have, and each and every of them has, as complainant is informed and believes, fraudulently attempted to procure the right, title and interest of defendant, Pack, in and to said locations so made by the said P. Perkins and others as hereinabove alleged for the express purpose, and none other, of using the said interest of the said Pack in and to said locations, in such a way and manner as to destroy all of complainant's rights and interest therein, and the right and interests of his predecessors in interest and to defraud this complainant and his predecessors in interest out of all interest in and to said claims, and each of them; this complainant further alleges on

like information and belief that the defendant, Joseph K. Hutchinson, has been acting as the agent, representative and attorney of the said Foreign Mines and Development Company, the American Trona Company, and the California Trona Company, and each of them, in endeavoring to deprive and defraud complainant and his predecessors in interest of their right and title in and to said placer mining locations, as above alleged; that the said defendant, Joseph K. Hutchinson, under the direction and orders of the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and each of them, fraudulently obtained said transfer of the said one-eighth interest in and to said placer mining claims, if he obtained said transfer at all, from defendant Schuler, in pursuance to the combination [18] and conspiracy entered into and carried on by and between said Foreign Mines and Development Company, the American Trona Company and each of them, and the said defendants herein, and each of them, to injure complainant and his predecessors in interest and defraud and deprive them of all of their right, title and interest in and to said claims, and each of them; that in further pursuance of said combination and conspiracy, and under the orders and direction of the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, or all or part of them, said defendant Joseph K. Hutchinson, and the said defendants Schuler and Pack, caused to be served upon the administrator or personal repre-

sentative of the estate of P. Perkins complainant's predecessor in interest the pretended Notice of Forfeiture above described (Exhibit "A"); that the fraudulent transfer of the said one-eighth interest in and to said claims by the said defendant Schuler to the said defendant Hutchinson, if any transfer was made at all, and the serving of the said pretended Notice of Forfeiture upon the administrator or personal representative of the estate of P. Perkins as aforesaid, was all done in pursuance to and in the carrying out of a combination and conspiracy entered into by and between the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, or all or part of them, and the said defendants, and each of them, confederated together for the purpose of injuring complainant and his predecessors in interest and depriving and defrauding them of all their right, title and interest in and to said placer mining claims above described.

IX.

Complainant further alleges upon his information and belief that the said pretended Notice of Forfeiture was prepared [19] and served upon the said administrator or personal representative of the estate of the said P. Perkins, as aforesaid, pursuant to and in the furtherance of such combination and conspiracy between the defendants herein and the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and that the said Thos. W. Pack never during the years 1911 and 1912, or at any other time,

expended or caused to be expended, the sum of \$5600.00 of his own funds or money, or any other sum or amount in and upon said claims, or upon one, or any of them, for any purpose whatsoever, and that neither he nor any of the defendants herein, or their co-conspirators are entitled to any contribution from complainant or his predecessors in interest in any sum or amount whatsoever.

X.

That complainant is informed and believes that none of the money defendant Pack claims to have expended as and for representation work, or for labor and improvements, or labor or improvements, on the above-described claims, or any thereof, if expended by the said Pack at all, was expended by him for the actual representation and assessment work upon the said claims, or any of them, as required by law; but complainant alleges that defendant Pack paid the moneys set forth in the said pretended Forfeiture Notice, if he paid any money at all, for certain goods, wares, and merchandise, furnished to certain laborers, employed by the predecessor in interest of complainant and their colocators or co-owners doing assessment work on said claims in the years 1911 and 1912, and for automobile hire in transporting said laborers and supplies to and from said placer mining claims.

XI.

That on the 14th day of January, 1913, one W. W. Colquhoun, [20] through his attorney, Joseph K. Hutchinson, one of the defendants herein, filed a suit against defendant Pack, one Henry E. Lee and

one T. O. Toland, in the Superior Court of the State of California, in and for the City and County of San Francisco, which said suit is entitled, "W. W. Colquhoun, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, a copartnership, and Thos. W. Pack, Henry E. Lee and T. O. Toland, as individuals, Defendants," and numbered 46604 in the records of the Superior Court of the City and County of San Francisco, State of California; that in the verified complaint in said suit plaintiff, W. W. Colquhoun, alleges that he is the assignor of C. J. and E. E. Teagle, and that the sum of \$750.00 is due him for certain goods, wares and merchandise sold and delivered to the said Pack and the other two defendants named in said suit, during the years 1911 and 1912, and that the same had never been paid. This complainant alleges upon information and belief that the said goods sued for in said action were purchased by said Pack from C. J. and E. E. Teagle in the town of Johannesburg, Kern County, California; that the whole amount of said goods, wares and merchandise so purchased by the said Pack from the said Teagles was the sum of \$969.00 and that the said Teagles admit that the sum of \$219.00 has been paid upon said account; that this complainant further alleges upon his information and belief that the said sum of \$750.00 sued for in said action, constitutes part of the amount which the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above-described placer mining claims,

and for the pretended payment of which the said defendants are now seeking contribution from this complainant and his predecessors in interest and threatening a forfeiture of their rights [21] and interests in and to said above-described placer mining claims, upon their failure so to contribute, as recited in their said pretended Notice of Forfeiture; that on the 4th day of February, 1914, a judgment was rendered in said suit against the said Pack, in favor of the said W. W. Colquhoun, in the whole amount sued for which said judgment is now standing of record and docketed in Volume No. 29 of Judgments at page 484 of the records of the County Clerk of the City and County of San Francisco, State of California, and has never been satisfied or discharged, either in whole or in part, or set aside, vacated or modified.

XII.

That on the 20th day of January, 1913, one M. A. Varney, by his attorney, Joseph K. Hutchinson, one of the defendants herein, filed a suit in the Superior Court of the City and County of San Francisco, State of California, against defendant Thos. W. Pack, one Henry E. Lee, and one T. O. Toland, which said suit was entitled in said Superior Court, "M. A. Varney, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, as individuals, and Thos. W. Pack, Henry E. Lee, and T. O. Toland, a copartnership, Defendants," and numbered 46692 in the records of the said Superior Court; that in the verified complaint in said suit the plaintiff therein, the said M. A. Varney, alleged that during the years 1911 and

1912 he furnished supplies and rendered services to defendant Thos. W. Pack and the other defendants therein, in the sum of \$4,180.00, of which said sum only \$535.00 had been paid; that thereafter and on or about the 4th day of February, 1913, a judgment was entered in said action against the said Thos. W. Pack, in favor of the said M. A. Varney, in the whole amount sued for. That complainant is informed and believes and therefore alleges the fact to be that said judgment in said suit is still standing of record and has never [22] been satisfied, set aside, vacated or modified. That complainant is informed and believes and therefore alleges the fact to be that the last above-named action was brought by the said M. A. Varney to recover the sum of \$4,180.00 from the said Thos. W. Pack, Henry E. Lee and T. O. Toland, for the use of two certain automobiles and certain supplies furnished by the said M. A. Varney to the said Thos. W. Pack, at his special instance and request, in the years 1911 and 1912, and used by the said Thos. W. Pack to transport men hired by complainant's predecessors in interest and their co-locators and co-owners to do the annual assessment work on said above-described placer claims for said years, and supplies for said men, from the City of Los Angeles and elsewhere to the above-described placer claims on Searles Borax Lake, San Bernardino County, California; that complainant alleges upon his information and belief that the said sum of \$4,180.00 sued for in said action, constitutes part of the amount the said defendants in this suit claim in their said pretended

Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911, for doing the assessment work on the above-described placer mining claims, and for the pretended payment of which the said defendants are now seeking contribution from this complainant and his predecessors in interest and threatening a forfeiture of their rights and interest *to* and *to* said above-described placer claims upon their failure so to contribute, as recited in their said pretended Notice of Forfeiture (Exhibit "A").

XIII.

That on the 2d day of September, 1913, one W. W. Colquhoun, by his attorneys, Joseph K. Hutchinson, one of the defendants herein, and Walter Slack, filed a suit in the Superior Court of the State of California, in and for the City and County of San [23] Francisco, against the predecessor in interest of this complainant the said P. Perkins and H. C. Fursman, W. Huff, R. Waymire, H. A. Baker, E. Thompson, D. Smith and S. Schuler, to recover the sum of \$750.00 alleged to be due said plaintiff for the value of certain goods, wares and merchandise, which said suit is entitled in said Superior Court, "W. W. Colquhoun, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, and S. Schuler, a copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as individuals, Defendants," and numbered 50723 in the files and records of the said Superior Court; that in his verified complaint in

said suit the said W. W. Colquhoun alleges that C. J. and E. E. Teagle assigned to him the said claim sued upon in said action; he further alleges that during the years 1911 and 1912 the said C. J. and E. E. Teagle furnished certain goods, wares and merchandise of the value of \$750.00 to defendants therein, including the said predecessor in interest of this complainant and that no part of said sum had been paid; that this complainant alleges the fact to be that said suit was brought by the said W. W. Colquhoun for the value of the said goods, wares and merchandise claimed to have been sold and delivered by said plaintiff's assignors to Thos. W. Pack in the years 1911 and 1912, and it is claimed that the same were used by a camp of men doing assessment work upon the claims hereinabove described, together with other placer mining claims, during the years 1911 and 1912; that the whole amount of the value of said goods, so alleged to have been sold was \$969.00, but that the said plaintiff in said suit admitted the payment of the sum of \$219.00 on account. That thereafter and on or about the 27th day of October, 1913, R. Waymire filed his verified answer to the complaint in said action; that thereafter a trial [24] was had of the issues therein, and after judgment had been entered against R. Waymire, the said Court on the 11th day of August, 1914, granted the motion of R. Waymire for a new trial thereof; that plaintiff in said suit, as this complainant is informed and believes in now prosecuting an appeal from the order of said Court granting the said motion for a new trial. That complainant alleges, upon his informa-

tion and belief, that the said sum of \$750.00 sued for in said action, and the sum of \$219.00 admitted to have been paid on account therein, constitute part of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above-described placer mining claims, and for the pretended payment of which by the said Pack, and the said defendants are now seeking contribution from this complainant and his predecessors in interest and threatening a forfeiture of their rights and interests in and to said above-described claims upon their failure to so contribute, as recited in their said pretended Notice of Forfeiture.

XIV.

That on the 30th day of August, 1913, one M. A. Varney, by his attorneys, Joseph K. Hutchinson, one of the defendants herein, and Walter Slack, filed a suit in the Superior Court of the City and County of San Francisco, State of California, against H. C. Fursman, W. Huff, R. Waymire, H. A. Baker, E. Thompson, D. Smith, S. Schuler and this complainant's predecessor in interest, P. Perkins, which said suit is entitled in said Superior Court, "M. A. Varney, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as individuals. [25] Defendants," and numbered 50724 in the files and records of the said Superior

Court; that in the verified complaint in said suit the plaintiff therein, the said M. A. Varney, alleged that during the years 1911 and 1912 he furnished supplies and rendered services to the defendants therein in the sum of \$4,170.00, of which said sum only \$500.00 has been paid; that this complainant alleges the fact to be that the said action was brought by the said M. A. Varney to recover the sum of \$3,670.00 from the said defendants for the use of two certain automobiles and certain supplies furnished by the said M. A. Varney to the said Pack at his special instance and request, in the years 1911 and 1912 and used by the said Pack to transport men and supplies from the City of Los Angeles and elsewhere to the above-described claims on Searles Borax Lake, San Bernardino County, California.

That thereafter and on or about the 20th day of October, 1913, R. Waymire filed his verified answer to the Complaint in said action; that thereafter various proceedings were had therein and a trial thereof was had before the Court, and that on or about the 16th day of July R. Waymire moved the Court for a nonsuit in said action, which motion for nonsuit was by the Court granted; that on or about the 7th day of October, 1914, judgment was entered in favor of R. Waymire which said judgment is now of record in the office of the Clerk of said Superior Court in Volume 77 of Judgments at page 93 thereof. That this complainant alleges upon his information and belief that the said sum of \$3,670.00, sued for in said action, and the sum of \$500.00 alleged to have been paid on account therein, constitute part of the

amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the years 1911 and 1912 for doing the assessment work on the above-described placer mining claims, and for the pretended [26] payment of which, by the said Pack, the said defendants are now seeking contribution from this complainant and his predecessors in interest, and threatening to forfeit all of complainant's rights, title and interest and the rights, title and interest of complainant's predecessors in interest in and to said placer mining claims, if they do not so contribute, as recited in their said pretended Notice of Forfeiture (Exhibit "A").

XV.

That on or about the 26th day of February, 1914, one Raphael Mojica filed an action in the Superior Court in the City and County of San Francisco, State of California, against complainant's predecessor in interest, the said P. Perkins, his colocators and defendant S. Schuler, as assignee of the defendant Pack, one Henry E. Lee, and various other parties to recover the sum of \$1,443.50, which said action is entitled "Raphael Mojica, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, a copartnership, H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, an association, and Henry E. Lee, Thomas O. Toland, H. C. Fursman, W. Huff, Rudolph Waymire, P. Perkins, H. A. Baker, E. Thompson, Dudley Smith, Stella Schuler, John Doe,

Jane Roe, Richard Roe and Mary Roe, Defendants," and is numbered 54989 in the files and records of said Superior Court; that in his verified complaint in said action the said plaintiff pretends to be the assignee of thirty certain Mexican laborers, and pretends therein that each of these said Mexican laborers named therein had assigned to him their claims against the defendants therein for doing certain labor and work, in and upon the above-described placer claims by way of assessment work thereon, during the year 1912; that said action is now at issue in said Superior [27] Court; that complainant is informed and believes and therefore alleges the fact to be that the said sum of \$1,443.50 sued for in said action constitutes a portion of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the years 1911 and 1912, for doing the assessment work on the above-described placer mining claims and for the pretended payment of which the said defendants are now seeking contribution from this complainant and his predecessors in interest, and threatening to forfeit all of complainant's right, title and interest and the right, title and interest of his predecessors in interest in and to said placer mining claims if they do not so contribute, as recited in their said pretended Notice of Forfeiture (Exhibit "A"); that complainant is informed and believes that no part of said sum of \$1,443.50 sued for in said action has been paid by the said Thos. W. Pack, or by anyone whomsoever for him.

XVI.

That a short time prior to the dates when the said defendant Thos. W. Pack claims to have expended money for the purpose of doing assessment work on the above-described placer mining claims, as claimed in defendant's pretended Notice of Forfeiture (Exhibit "A"), one Henry E. Lee, as the duly authorized agent and representative of the predecessors in interest of this complainant, and of his colocators paid to the said defendant Thos. W. Pack for complainant's predecessors in interest and for his said colocators and co-owners, in their respective proportionate shares, the sum of \$1,000.00, as a portion of their *pro rata* contribution for the doing of said actual assessment work for the years 1911 and 1912 upon said claims, and for the purpose of being applied toward and used in said actual assessment work thereon; that as [28] complainant is informed and believes the said Thos. W. Pack, did so use the said sum of \$1,000.00 for said purpose in said year and that the said amount should be credited to this complainant and his predecessors in interest and their colocators and co-owners in proportion to their respective interests in the said placer mining claims.

XVII.

That complainant further alleges that during the year 1911, and prior to the time any money is claimed to have been expended by the said defendant Pack in his said pretended Notice of Forfeiture (Exhibit "A"), the said defendant Pack duly acknowledged in writing that he was indebted to one Henry E. Lee, the duly authorized agent of complainant's prede-

cessors in interest, and their colocators and co-owners, in the sum of \$1,836.00, and that the said Henry E. Lee, acting as such agent for complainant's predecessors in interest and their colocators and co-owners, directed the said defendant Pack to use and utilize all of said money, or so much thereof as might be necessary, in the annual representation of the placer mining claims hereinabove described in said pretended Notice of Forfeiture (Exhibit "A") for the years 1911 and 1912, and that the said defendant Pack agreed with the said Henry E. Lee that he would so utilize and use said money; that complainant claims that said sum of \$1,836.00 is and should be a portion of the money expended by the said defendant Pack, as described in the said pretended Notice of Forfeiture (Exhibit "A"); that the said money and indebtedness was money due and owing to the predecessors in interest of this complainant and their colocators and co-owners from the said defendant Pack, duly evidenced by his written acknowledgment of such indebtedness to the said Henry E. Lee, the duly authorized agent of this complainant's predecessors [29] in interest, and their colocators and co-owners, and that said amount should be credited to this complainant and his predecessors in interest and their colocators and co-owners, in proportion to their respective interests in the said placer mining claims.

XVIII.

Complainant further alleges that in and by the terms of said pretended Notice of Forfeiture (Exhibit "A") it is not disclosed that the said defendant

Pack, or either of the other said defendants, or anyone in their behalf, or in behalf of either of them, ever expended the sum of \$100.00 on each or any of the placer claims described in said pretended Notice of Forfeiture (Exhibit "A"); that by said pretended Notice of Forfeiture (Exhibit "A") it is claimed by the defendants in this action that \$5,600.00 was expended for annual representation of one hundred seventy-five placer mining claims described in said pretended Notice of Forfeiture, for the years 1911 and 1912, while in truth and in fact the Statutes of the United States and of the State of California require that \$100.00 in labor or improvements be placed upon each separate claim for each separate year and that the sum of \$35,000.00 would be required by said Statutes above referred to, to fully represent each and all of said one hundred seventy-five claims for the two years 1911 and 1912; that it is not claimed in said pretended Notice of Forfeiture (Exhibit "A") and cannot be ascertained therefrom upon which separate placer mining claim or claims, out of the one hundred seventy-five placer mining claims described therein, said defendant Pack, or either of said defendants, claim to have expended any money for labor or improvements in the annual representation for either of said years 1911 and 1912; that it does not appear from said pretended [30] Notice of Forfeiture (Exhibit "A") and it cannot be ascertained therefrom, which particular placer claim or claims was represented by the said Pack, or by either of said defendants, if any were represented at all, either for the year 1911 or

for the year 1912; that it does not appear from said pretended Notice of Forfeiture (Exhibit "A") and it cannot be ascertained therefrom, how much money, if any, the said defendant Pack, or either of said defendants, expended in labor or improvements, on any of said placer claims, either for the year 1911 or for the year 1912; that it does not appear from said pretended Notice of Forfeiture (Exhibit "A") and it cannot be ascertained therefrom whether the said defendant Pack, or either of said defendants, expended the sum of \$100.00 in labor or improvements upon either of said placer claims, either for the year 1911 or 1912, or whether the said \$5,600.00 so claimed to have been expended by said defendant Pack was expended upon all of said claims, or upon which of said one hundred seventy-five placer claims, and if so expended, how much of the same was expended upon either or any of said one hundred seventy-five claims;

XIX.

This complainant further alleges that simultaneously with the service of said pretended Notice of Forfeiture (Exhibit "A") upon the administrator or personal representative of the estate of P. Perkins, as aforesaid, the said defendants caused to be served upon the said administrator or personal representative of the said estate of P. Perkins, as complainant is informed and believes, two other and further pretended Notices of Forfeiture, by one of which the said defendant Pack, and each and all of said defendants, claimed that said defendant Pack had expended the sum of \$1,200.00 upon twelve of said

one hundred seventy-five placer claims, described in said Exhibit "A," namely the Soda [31] Placer Mining Claims numbered 68, 69, 70, 71, 72, 87, 88, 89, 90, 91, 111 and 112, in the annual representation of said claims for the year 1911.

XX.

This complainant further alleges that simultaneously with the service of said pretended Notice of Forfeiture (Exhibit "A") upon the administrator or personal representative of the estate of P. Perkins, as aforesaid, the said defendants caused to be served upon the said administrator or personal representative of the said estate of P. Perkins, as complainant is informed and believes, two other and further pretended Notices of Forfeiture, by one of which the said defendant Pack, and each and all of said defendants, claimed that said defendant Pack had expended the sum of \$4,400.00 upon forty-four of said one hundred and seventy-five placer claims, described in said Exhibit "A," namely the Soda Placer Mining Claims numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 48, 49, 50, 67, 70, 73, 86, 92, 93, 113, 114, 130 and 218, in the annual representation of said claims for the year 1912.

XXI.

That complainant is informed and believes and therefore alleges that the \$5,600.00 which said defendant Pack, and each and all of the other said defendants claim as having been expended by said Pack upon said one hundred seventy-five placer claims in the years 1911 and 1912 is the same money

and cash as the \$1,200.00 and \$4,400.00 claimed to have been expended by said Pack in doing the annual representation work upon said twelve placer claims for the year 1911 and said forty-four placer claims for the year 1912, as set forth in the said other pretended Notices [32] of Forfeiture above described, and therefore this complainant claims that none of said defendants, and neither of them, are entitled to any contribution from this complainant or his predecessors in interest under said pretended Notice of Forfeiture (Exhibit "A").

XXII.

Complainant further alleges that while complainant's predecessors in interest and their colocators and co-owners were engaged in the performance of the annual representation upon said one hundred seventy-five placer claims for the year 1912, they were forcibly prevented from completing said annual representation upon the whole of said one hundred seventy-five placer claims by the Foreign Mines and Development Company, American Trona Company and the California Trona Company, or by each and all of said corporations, or by their or each of their agents, employees, representatives, servants or attorneys, and that the employees of this complainant's predecessors in interest and their colocators, and the persons representing complainant's predecessors in interest and their colocators and co-owners in doing said annual representation upon said one hundred seventy-five placer claims for the year 1912, were forcibly ejected and driven from said placer claims by the said Foreign Mines and Development Com-

pany, the American Trona Company and the California Trona Company, or by each or all of them, or by their or each of their agents, representatives, employees, servants or attorneys, and threatened with great physical violence and injury in case they or any of them returned to said placer claims, or any of them, or attempted to place upon said claims, or any of them, any labor or improvements in the annual representation thereof for the year 1912; complainant therefore claims that [33] none of said defendants, and neither of them, are entitled to any contribution from this complainant or his predecessors in interest, for the annual representation of said one hundred seventy-five placer claims, or either of them, for the years 1911 and 1912.

XXIII.

Complainant has no means of knowing or of ascertaining what, if any, amount of his own money or funds said defendant has expended on said placer mining claims, or upon any of them, for annual representation work for the years 1911 and 1912, and that the only method whereby complainant can procure said information is through this Court and by its order compelling the defendant, Thos. W. Pack, to account for and disclose any and all moneys expended or spent by him upon said placer mining claims, above described, or upon any of them, during the years 1911 and 1912, for the purpose of representing same, and each and all thereof, for said year, if any, money at all was so expended by said Thos. W. Pack for such purpose, and whose money, if any, was expended by him, how expended, and what

amount of the same, if any was so expended and spent for labor and improvements, or labor or improvements *u* upon the above-described claims, or upon any of them, which could lawfully be counted, considered or applied as such representation work, and for the expenditure of which he would be entitled to *pro rata* contribution from this complainant and his predecessors in interest.

XXIV.

Complainant hereby and herewith offers and stands ready to pay to the said Thos. W. Pack, or these defendants, or either of them, his proportionate share of any moneys belonging to the said defendant Thos. W. Pack which this Court finds were expended by the said Thos. W. Pack on the above-described claims, or any of them, as actual representation work thereon for the years [34] 1911 and 1912, if the Court finds he so expended any money at all for such purpose.

XXV.

Complainant further alleges that if the said defendants are allowed to proceed under said pretended Notice of Forfeiture (Exhibit "A") they will, at the expiration of ninety days from and after the date of the service of the said pretended Notice of Forfeiture, file and record a copy of said Notice of Forfeiture (Exhibit "A") and an affidavit of service, with the County Recorder of San Bernardino County, California, and claim and assert that all the right, title and interest of this complainant and his predecessors in interest in and to said placer claims, and each and all thereof, has been duly and

legally forfeited and extinguished and thereby and by means thereof a cloud will be cast upon the title and interest of this complainant, and his predecessors in interest in and to said placer mining claims, and each of them, and complainant be compelled to institute and prosecute a great number of suits to remove said cloud, at a great and exorbitant expense; that unless defendants are enjoined and restrained from proceeding to declare the forfeiture of complainant's rights and the rights of his predecessors in interest in and to said placer claims and each of them as claimed in their said Notice of Forfeiture (Exhibit "A") this complainant will be compelled to institute, prosecute and maintain a multiplicity of suits in order to remove the clouds cast upon his said title and interest in and to each of said placer mining claims.

XXVI.

That complainant has no plain, speedy, or adequate remedy at law in the premises, and unless defendants, and each of them, are restrained and enjoined from declaring a forfeiture of [35] all of his right, title and interest and the rights, title and interest of his predecessors in interest in and to said claims, and each thereof, pursuant to and in accordance with the pretended Notice of Forfeiture (Exhibit "A"), complainant will be irrevocably and irreparably damaged and injured, and be defrauded or deprived of all of his right, title and interest in and to said placer mining claims, and each of them.

WHEREFORE, complainant prays:

1. For a decree of this Court preventing any for-

feiture of any right, title, interest or claim of this complainant or his predecessors in interest in and to said placer mining claims above described, and in and to each and all of them.

2. For a decree of this Court directing said defendants, and each of them, to account and disclose to this complainant, and to this Court, for all moneys, if any, belonging to the said Pack and constituting his own personal funds, and used and expended by him in procuring labor or improvements, or labor or improvements, which could be legally counted, considered or claimed as a representation or annual assessment work for the years 1911 and 1912, on the above-described placer mining claims, and on each of them, and that this Court ascertain and determine the amount, if any, thereof, and the proportion, if any, which this complainant should pay.

3. That these defendants, and each of them, their agents, attorneys, servants and employees be permanently restrained and enjoined from taking any steps to perfect or establish any forfeiture of complainant's rights, titles, and interests, or the rights, titles and interests of his predecessors in interest, in or to said placer mining claims, hereinabove described, or in or to any part or portion thereof, or any of them, and that in the [36] meantime during the pendency of this suit, and until the final determination thereof on the merits, said defendants, and each of them, their attorneys, agents, servants, representatives or employees, and each and all of them, be restrained and enjoined from taking any steps to cast a cloud upon the title, or to forfeit or

to perfect or establish any forfeiture of complainant's rights, titles or interests or the rights, titles or interests of his predecessors in interest in or to said placer mining claims hereinabove described, or any part or portion thereof, or any of them.

4. For complainant's costs of suit.

5. For such other and further relief as this Honorable Court may deem just and equitable in the premises.

H. L. CLAYBERG,
CLAYBERG & WHITMORE,
Attorneys for Complainant. [37]

*In the District Court of the United States, Southern
District of California.*

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

State of California,

City and County of San Francisco,—ss.

Henry E. Lee, being first duly sworn upon his oath, says:

That he has read the complaint in the above-entitled action, to which this affidavit is attached, and knows the contents thereof; that he has personal knowledge of all the facts and matters therein alleged, and knows them to be true, except as to those matters therein alleged upon information and belief,

and as to them, he believes them to be true.

That he makes this affidavit for the plaintiff and on his behalf, for the reason that the said plaintiff is not a resident of the City and County of San Francisco, State of California, and is not at the date of the making of this affidavit within said State of California, or within the City and County of San Francisco wherein this affiant resides and has his office and place of business.

HENRY E. LEE,

Subscribed and sworn to before me, this 11th day of December, 1914.

[Seal]

J. D. BROWN,

Notary Public in and for the City and County of San Francisco, State of California. [38]

Exhibit "A" [to Bill in Equity].

NOTICE OF FORFEITURE.

710 Claus Spreckels Building.

San Francisco, California,

September, 14th, 1914.

George W. Irwin, Administrator of the Estate of P. Perkins, Deceased:

You are hereby notified that I, the undersigned, T. W. PACK, expended during the year 1912 the sum of Forty-four Hundred Dollars (\$4400), in amounts of One Hundred Dollars (\$100), for labor and improvements, upon each of the forty-four (44) following described placer mining claims:

Those certain placer mining claims situate in and upon Searles Borax Lake, County of San Bernardino, State of California, more particularly named and numbered as follows:

“The Soda No. 1 Placer Mining Claim” to and including “The Soda No. 31 Placer Mining Claim,” location notices of which said claims are recorded in Volume No. 82 of Mining Records of said County of San Bernardino, State of California, on pages numbers 131 to 146 inclusive, of said volume;

“The Soda No. 48 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 154 of said volume;

“The Soda No. 49 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 155 of said volume;

“The Soda No. 50 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 155 of said volume;

“The Soda No. 67 Placer Mining Claim,” the location notice [39] of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 164 of said volume;

“The Soda No. 70 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 165 of said volume;

“The Soda No. 73 Placer Mining Claim,” the loca-

tion notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 167 of said volume;

“The Soda No. 86 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 173 of said volume;

“The Soda No. 92 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 176 of said volume;

“The Soda No. 93 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 177 of said volume;

“The Soda No. 113 Placer Mining Claim,” the location notice of which claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 187 of said volume;

“The Soda No. 130 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 218 of said volume.

You are hereby further notified that said sum of \$4400 (being \$100 for each of said claims), was expended by me for the purpose [40] of complying

with the requirements of Section 2324 of the Revised Statutes of the United States and amendments thereof, concerning the performance of annual labor upon mining claims.

You are hereby further notified that the amount of \$100 was the amount required to hold each of said claims for the said year ending December 31st, 1912, and that said sum of \$400 was the aggregate amount required to hold said forty-four claims for said year 1912.

You are hereby further notified that throughout said year of 1912 I was the owner of an undivided one-eighth interest in said claims and therefore a co-owner with you throughout said period, during which you also were the owner of an undivided one-eighth interest in said claims.

You are hereby further notified that subsequent to the making of said expenditures I transferred my said one-eighth interest to S. Schuler, and that she has transferred said one-eighth interest to Joseph K. Hutchinson, who is now the owner thereof.

You are hereby further notified that I, T. W. Pack, together with said S. Schuler, and said Joseph K. Hutchinson, also undersigned, having received no contribution from you for your proportion, to wit: one-eighth, of said expenditures, do, and each of us does hereby make demand upon you for contribution by you of your proportion of said expenditures, to wit: of the sum of \$550, or one-eighth of said sum of \$4400.

You are hereby further notified that if, within ninety (90) days from the personal service of this

notice upon you, you fail or refuse to contribute your proportion of said expenditure, to wit: \$550, or one-eighth of said sum of \$4400, by payment of the same to said Joseph K. Hutchinson, at Room 710, Claus Spreckels Building, City and County of San Francisco, State of California, he being duly authorized to collect said money and receipt for the same, your said interest in said mining claims, and each of them, will become the property of the undersigned. [41]

Dated, San Francisco, California, September 14, 1914.

(Signed) S. SCHULER.

T. W. PACK.

JOSEPH K. HUTCHINSON.

[Endorsed]: No. B. 58—Eq. U. S. District Court, Southern District California, Southern Division. In Equity. Cecil C. Carter vs. Thomas W. Pack, Stella Schuler, Joseph K. Hutchinson. Bill of Complaint. Filed Dec. 12, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. H. L. Clayberg, Clayberg & Whitmore, 937 Pacific Building, San Francisco, Attorneys for Complainant. [42]

*In the District Court of the United States, Southern
District of California.*

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Restraining Order and Order to Show Cause.

Whereas, plaintiff above named has filed his verified bill in equity in the above-entitled cause against the defendants above named praying for certain equitable relief and an order of this Court restraining and enjoining defendants and each of them during the pendency of this suit and until the final determination thereof upon its merits, from in any way or manner casting a cloud upon the title of or taking any steps toward forfeiting or declaring forfeited any of plaintiff's right, title or interest in and to certain placer mining claims in said bill of complaint and hereinafter fully described, named and numbered; and

Whereas, upon a reading of plaintiff's said bill of complaint it satisfactorily appears to the Court therefrom that plaintiff may suffer irreparable and irrevocable damage and injury, before the hearing of the order to show cause hereinafter set forth, unless, pending the hearing on said order to show cause, said defendants and each of them are by this Court restrained as hereinafter set forth, and other good cause appearing. [43]

NOW, THEREFORE, IT IS HEREBY ORDERED that you, the said defendants, Thos. W. Pack, S. Schuler and Jos. K. Hutchinson, and each of you, your and each of your attorneys, agents, servants and employees are hereby specially restrained and enjoined from in any way or manner taking any steps toward forfeiting or declaring a forfeiture of

plaintiff's right, title and interest in and to certain hereinafter described placer mining claims, and each of them, pursuant to or in accordance with your pretended notice of forfeiture heretofore, and within ninety days prior to the date hereof, served upon plaintiff herein, a copy of which is attached to the said bill of complaint and marked Exhibit "A," until the hearing of the application of plaintiff for an injunction *pendente lite* in this cause, which said application is hereby set for hearing before this Court on the 21 day of December, 1914, or until the further order of this Court;

IT IS FURTHER ORDERED that you and each of you appear before this Court at 10:30 o'clock A. M., on the 21 day of December, 1914, at the Courtroom of Division No. — of the District Court of the United States for the Southern District of California, in the Federal Building, in the City of Los Angeles, County of Los Angeles, State of California, and then and there to show cause, if any you have, why said restraining order, as hereinabove made, should not be made permanent during the pendency of this suit and until the final determination thereof on its merits.

Said placer mining claims above named are described, numbered and named as follows, being situate on Searles Borax Lake, County of San Bernardino, State of California, the location notices of which said placer claims are recorded in Volume 82 of Mining Records, in the office of the County Recorder of the said County of San Bernardino, State of California, at the following respective pages of

said Volume 82 set down opposite and following the hereinafter described, named and numbered placer mining claims: [44]

Dated this 15th day of December, 1914.

BENJAMIN F. BLEDSOE,

Judge.

- "The Soda No. 1 Placer Mining Claim," at page 131 thereof;
- "The Soda No. 2 Placer Mining Claim," at page 131 thereof;
- "The Soda No. 3 Placer Mining Claim," at page 132 thereof;
- "The Soda No. 4 Placer Mining Claim," at page 132 thereof;
- "The Soda No. 5 Placer Mining Claim," at page 133 thereof;
- "The Soda No. 6 Placer Mining Claim," at page 133 thereof;
- "The Soda No. 7 Placer Mining Claim," at page 134 thereof;
- "The Soda No. 8 Placer Mining Claim," at page 134 thereof;
- "The Soda No. 9 Placer Mining Claim," at page 135 thereof;
- "The Soda No. 10 Placer Mining Claim," at page 135 thereof;
- "The Soda No. 11 Placer Mining Claim," at page 136 thereof;
- "The Soda No. 12 Placer Mining Claim," at page 136 thereof;
- "The Soda No. 13 Placer Mining Claim," at page 137 thereof;
- "The Soda No. 14 Placer Mining Claim," at page 137 thereof;
- "The Soda No. 15 Placer Mining Claim," at page 138 thereof;
- "The Soda No. 16 Placer Mining Claim," at page 138 thereof;
- "The Soda No. 17 Placer Mining Claim," at page 139 thereof;
- "The Soda No. 18 Placer Mining Claim," at page 139 thereof;
- "The Soda No. 19 Placer Mining Claim," at page 140 thereof;
- "The Soda No. 20 Placer Mining Claim," at page 140 thereof;
- "The Soda No. 21 Placer Mining Claim," at page 141 thereof;
- "The Soda No. 22 Placer Mining Claim," at page 141 thereof;
- "The Soda No. 23 Placer Mining Claim," at page 142 thereof;
- "The Soda No. 24 Placer Mining Claim," at page 142 thereof;
- "The Soda No. 25 Placer Mining Claim," at page 143 thereof;
- "The Soda No. 26 Placer Mining Claim," at page 143 thereof;
- "The Soda No. 27 Placer Mining Claim," at page 144 thereof;
- "The Soda No. 28 Placer Mining Claim," at page 144 thereof;
- "The Soda No. 29 Placer Mining Claim," at page 145 thereof;

- "The Soda No. 30 Placer Mining Claim," at page 145 thereof ;
"The Soda No. 31 Placer Mining Claim," at page 146 thereof ;
"The Soda No. 32 Placer Mining Claim," at page 146 thereof ;
"The Soda No. 33 Placer Mining Claim," at page 147 thereof ;
"The Soda No. 34 Placer Mining Claim," at page 147 thereof ;
"The Soda No. 35 Placer Mining Claim," at page 148 thereof ;
"The Soda No. 36 Placer Mining Claim," at page 148 thereof ;
"The Soda No. 37 Placer Mining Claim," at page 149 thereof ;
"The Soda No. 38 Placer Mining Claim," at page 149 thereof ;
"The Soda No. 39 Placer Mining Claim," at page 150 thereof ;
"The Soda No. 40 Placer Mining Claim," at page 150 thereof ;
"The Soda No. 41 Placer Mining Claim," at page 151 thereof ;
"The Soda No. 42 Placer Mining Claim," at page 151 thereof ;
"The Soda No. 43 Placer Mining Claim," at page 152 thereof ;
"The Soda No. 44 Placer Mining Claim," at page 152 thereof ;
"The Soda No. 45 Placer Mining Claim," at page 153 thereof ;
"The Soda No. 46 Placer Mining Claim," at page 153 thereof ;
"The Soda No. 47 Placer Mining Claim," at page 154 thereof ;
"The Soda No. 48 Placer Mining Claim," at page 154 thereof ;
"The Soda No. 49 Placer Mining Claim," at page 155 thereof ;
"The Soda No. 50 Placer Mining Claim," at page 155 thereof ;
"The Soda No. 51 Placer Mining Claim," at page 156 thereof ;
"The Soda No. 52 Placer Mining Claim," at page 156 thereof ;
"The Soda No. 53 Placer Mining Claim," at page 157 thereof ;
"The Soda No. 54 Placer Mining Claim," at page 157 thereof ;
"The Soda No. 55 Placer Mining Claim," at page 158 thereof ;
"The Soda No. 56 Placer Mining Claim," at page 158 thereof ;
"The Soda No. 57 Placer Mining Claim," at page 159 thereof ;
"The Soda No. 58 Placer Mining Claim," at page 159 thereof ;
"The Soda No. 59 Placer Mining Claim," at page 160 thereof ;
"The Soda No. 60 Placer Mining Claim," at page 160 thereof ;
"The Soda No. 61 Placer Mining Claim," at page 161 thereof ;
"The Soda No. 62 Placer Mining Claim," at page 161 thereof ;
"The Soda No. 63 Placer Mining Claim," at page 162 thereof ;

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- "The Soda No. 64 Placer Mining Claim," at page 162 thereof ;

- "The Soda No. 65 Placer Mining Claim," at page 163 thereof;
"The Soda No. 66 Placer Mining Claim," at page 163 thereof;
"The Soda No. 67 Placer Mining Claim," at page 164 thereof;
"The Soda No. 68 Placer Mining Claim," at page 164 thereof;
"The Soda No. 69 Placer Mining Claim," at page 165 thereof;
"The Soda No. 70 Placer Mining Claim," at page 165 thereof;
"The Soda No. 71 Placer Mining Claim," at page 166 thereof;
"The Soda No. 72 Placer Mining Claim," at page 166 thereof;
"The Soda No. 73 Placer Mining Claim," at page 167 thereof;
"The Soda No. 74 Placer Mining Claim," at page 167 thereof;
"The Soda No. 75 Placer Mining Claim," at page 168 thereof;
"The Soda No. 76 Placer Mining Claim," at page 168 thereof;
"The Soda No. 77 Placer Mining Claim," at page 169 thereof;
"The Soda No. 78 Placer Mining Claim," at page 169 thereof;
"The Soda No. 79 Placer Mining Claim," at page 170 thereof;
"The Soda No. 80 Placer Mining Claim," at page 170 thereof;
"The Soda No. 81 Placer Mining Claim," at page 171 thereof;
"The Soda No. 82 Placer Mining Claim," at page 171 thereof;
"The Soda No. 83 Placer Mining Claim," at page 172 thereof;
"The Soda No. 84 Placer Mining Claim," at page 172 thereof;
"The Soda No. 85 Placer Mining Claim," at page 173 thereof;
"The Soda No. 86 Placer Mining Claim," at page 173 thereof;
"The Soda No. 87 Placer Mining Claim," at page 174 thereof;
"The Soda No. 88 Placer Mining Claim," at page 174 thereof;
"The Soda No. 89 Placer Mining Claim," at page 175 thereof;
"The Soda No. 90 Placer Mining Claim," at page 175 thereof;
"The Soda No. 91 Placer Mining Claim," at page 176 thereof;
"The Soda No. 92 Placer Mining Claim," at page 176 thereof;
"The Soda No. 93 Placer Mining Claim," at page 177 thereof;
"The Soda No. 94 Placer Mining Claim," at page 177 thereof;
"The Soda No. 95 Placer Mining Claim," at page 178 thereof;
"The Soda No. 96 Placer Mining Claim," at page 178 thereof;
"The Soda No. 97 Placer Mining Claim," at page 179 thereof;
"The Soda No. 98 Placer Mining Claim," at page 179 thereof;
"The Soda No. 99 Placer Mining Claim," at page 180 thereof;

“The Soda No. 100 Placer Mining Claim,” at page 180 thereof;
“The Soda No. 101 Placer Mining Claim,” at page 181 thereof;
“The Soda No. 102 Placer Mining Claim,” at page 181 thereof;
“The Soda No. 103 Placer Mining Claim,” at page 182 thereof;
“The Soda No. 104 Placer Mining Claim,” at page 182 thereof;
“The Soda No. 105 Placer Mining Claim,” at page 183 thereof;
“The Soda No. 106 Placer Mining Claim,” at page 183 thereof;
“The Soda No. 107 Placer Mining Claim,” at page 184 thereof;
“The Soda No. 108 Placer Mining Claim,” at page 184 thereof;
“The Soda No. 109 Placer Mining Claim,” at page 185 thereof;
“The Soda No. 110 Placer Mining Claim,” at page 185 thereof;
“The Soda No. 111 Placer Mining Claim,” at page 186 thereof;
“The Soda No. 112 Placer Mining Claim,” at page 186 thereof;
“The Soda No. 113 Placer Mining Claim,” at page 187 thereof;
“The Soda No. 114 Placer Mining Claim,” at page 187 thereof;
“The Soda No. 115 Placer Mining Claim,” at page 188 thereof;
“The Soda No. 116 Placer Mining Claim,” at page 188 thereof;
“The Soda No. 117 Placer Mining Claim,” at page 189 thereof;
“The Soda No. 118 Placer Mining Claim,” at page 189 thereof;
“The Soda No. 119 Placer Mining Claim,” at page 190 thereof;
“The Soda No. 120 Placer Mining Claim,” at page 190 thereof;
“The Soda No. 121 Placer Mining Claim,” at page 191 thereof;
“The Soda No. 122 Placer Mining Claim,” at page 191 thereof;
“The Soda No. 123 Placer Mining Claim,” at page 192 thereof;
“The Soda No. 124 Placer Mining Claim,” at page 192 thereof;

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“The Soda No. 125 Placer Mining Claim,” at page 193 thereof;
“The Soda No. 126 Placer Mining Claim,” at page 193 thereof;
“The Soda No. 127 Placer Mining Claim,” at page 194 thereof;
“The Soda No. 128 Placer Mining Claim,” at page 194 thereof;
“The Soda No. 129 Placer Mining Claim,” at page 195 thereof;
“The Soda No. 130 Placer Mining Claim,” at page 195 thereof;
“The Soda No. 131 Placer Mining Claim,” at page 196 thereof;
“The Soda No. 132 Placer Mining Claim,” at page 196 thereof;
“The Soda No. 133 Placer Mining Claim,” at page 197 thereof;
“The Soda No. 134 Placer Mining Claim,” at page 197 thereof;

- "The Soda No. 135 Placer Mining Claim," at page 198 thereof ;
"The Soda No. 136 Placer Mining Claim," at page 198 thereof ;
"The Soda No. 137 Placer Mining Claim," at page 199 thereof ;
"The Soda No. 138 Placer Mining Claim," at page 199 thereof ;
"The Soda No. 139 Placer Mining Claim," at page 200 thereof ;
"The Soda No. 140 Placer Mining Claim," at page 200 thereof ;
"The Soda No. 141 Placer Mining Claim," at page 201 thereof ;
"The Soda No. 142 Placer Mining Claim," at page 201 thereof ;
"The Soda No. 143 Placer Mining Claim," at page 202 thereof ;
"The Soda No. 144 Placer Mining Claim," at page 202 thereof ;
"The Soda No. 145 Placer Mining Claim," at page 203 thereof ;
"The Soda No. 146 Placer Mining Claim," at page 203 thereof ;
"The Soda No. 147 Placer Mining Claim," at page 204 thereof ;
"The Soda No. 148 Placer Mining Claim," at page 204 thereof ;
"The Soda No. 149 Placer Mining Claim," at page 205 thereof ;
"The Soda No. 150 Placer Mining Claim," at page 205 thereof ;
"The Soda No. 151 Placer Mining Claim," at page 206 thereof ;
"The Soda No. 152 Placer Mining Claim," at page 206 thereof ;
"The Soda No. 196 Placer Mining Claim," at page 207 thereof ;
"The Soda No. 197 Placer Mining Claim," at page 207 thereof ;
"The Soda No. 198 Placer Mining Claim," at page 208 thereof ;
"The Soda No. 199 Placer Mining Claim," at page 208 thereof ;
"The Soda No. 200 Placer Mining Claim," at page 209 thereof ;
"The Soda No. 201 Placer Mining Claim," at page 209 thereof ;
"The Soda No. 202 Placer Mining Claim," at page 210 thereof ;
"The Soda No. 203 Placer Mining Claim," at page 210 thereof ;
"The Soda No. 204 Placer Mining Claim," at page 211 thereof ;
"The Soda No. 205 Placer Mining Claim," at page 211 thereof ;
"The Soda No. 206 Placer Mining Claim," at page 212 thereof ;
"The Soda No. 207 Placer Mining Claim," at page 212 thereof ;
"The Soda No. 208 Placer Mining Claim," at page 213 thereof ;
"The Soda No. 209 Placer Mining Claim," at page 213 thereof ;
"The Soda No. 210 Placer Mining Claim," at page 214 thereof ;
"The Soda No. 211 Placer Mining Claim," at page 214 thereof ;
"The Soda No. 212 Placer Mining Claim," at page 215 thereof ;

“The Soda No. 213 Placer Mining Claim,” at page 215 thereof;
 “The Soda No. 214 Placer Mining Claim,” at page 216 thereof;
 “The Soda No. 215 Placer Mining Claim,” at page 216 thereof;
 “The Soda No. 216 Placer Mining Claim,” at page 217 thereof;
 “The Soda No. 217 Placer Mining Claim,” at page 217 thereof;
 “The Soda No. 218 Placer Mining Claim,” at page 218 thereof;

[Endorsed]: No. B. 58—Eq. U. S. District Court, Southern District California, Division. In Equity. Cecil C. Carter vs. Thomas W. Pack, Stella Schuler, Joseph K. Hutchinson. Restraining Order and Order to Show Cause. Filed Dec. 15, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. H. L. Clayberg, Clayberg & Whitmore, 937 Pacific Building, San Francisco, Attorneys for Complainant. [47]

In the District Court of the United States, Southern District of California.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
 JOSEPH K. HUTCHINSON,

Defendants.

**Notice of Motion for Order Vacating and Dissolving
 Temporary Restraining Order.**

To Cecil C. Carter, complainant above named, and to
 Messrs. H. L. Clayberg and Clayberg & Whitmore, his attorneys:

You and each of you will please take notice, that on Friday, the 18th day of December, 1914, at the

hour of 10:30 o'clock A. M., or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled court, Southern Division thereof, in the Federal Building, in the city of Los Angeles, county of Los Angeles, State of California, defendants above named will move said Court for an order vacating and dissolving the temporary restraining order heretofore and on the 15th day of December, 1914, issued in the above-entitled action.

Said motion will be made upon the following grounds:

1. That the allegations of the complainant's bill on file in the above-entitled cause, taken in connection with the allegations contained in the affidavits hereinafter mentioned and served herewith show that complainant is not entitled to said temporary restraining order.

2. That the above-entitled cause does not present a case [48] for the issuance of said temporary restraining order.

3. That defendants, and each of them, will be irreparably injured if said order is not vacated and dissolved.

4. That said order does not provide for any security for defendants' costs and damages and it appears from the affidavits served herewith that complainant is financially irresponsible.

Said motion will be made upon the affidavits of Joseph K. Hutchinson, Stella Schuler and Thomas W. Pack, the defendants above named, served and filed herewith, and upon all the records, papers, proceedings and files in the above-entitled action, and

upon this Notice of Motion and upon oral testimony to be adduced at the hearing of said motion.

Dated Los Angeles, Cal., December 15, 1914.

JOSEPH K. HUTCHINSON,
Attorney for Defendants and in *Propria Persona*.

[Endorsed]: No. B. 58—Equity. United States District Court, Southern District of California (Original) Cecil C. Carter, Complainant, vs. Thos. W. Pack, Stella Schuler and Joseph K. Hutchinson, Defendants. Notice of Motion for Order Vacating and Dissolving Temporary Restraining Order. Filed Dec. 16, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pursuant to Rule 49, E. L. Ball, Attorney at Law, 737 Consolidated Realty Bldg., Los Angeles, Cal., is hereby designated as the person on whom to serve papers in this cause. Joseph K. Hutchinson, Attorney for Defendants, San Francisco, Calif. [49]

*In the District Court of the United States, Southern
District of California.*

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER, and
JOSEPH K. HUTCHINSON,
Defendants.

**Affidavit of Defendant Joseph K. Hutchinson on
Motion to Dissolve Temporary Restraining
Order.**

State of California,
County of Los Angeles,—ss.

JOSEPH K. HUTCHINSON, being first duly sworn, deposes and says:

That he is, and at all the times herein mentioned, was a white male citizen of the United States, and a resident and citizen of the state of California, over the age of twenty-one years, and one of the defendants in the above-entitled cause; that the interests of affiant in the subject matter of said cause are joint and inseparable from the like interests of the other two defendants in said cause; that affiant makes this affidavit for and on behalf of each and all of the said defendants above named, including affiant;

That affiant has read the Bill of Complaint on file in said cause, and knows the contents thereof, and each and every allegation therein contained;

That the P. Perkins referred to in complainant's bill on file herein as being one of the original locators of said placer mining claim, and as being one of complainant's predecessors in interest, died at the city of Colorado Springs, county of El Paso, state of Colorado, in the early part of the year 1914; that thereafter and [50] in the said early part of said year of 1914, one George M. Irwin was, upon his petition made to the District Court of the state of Colorado, in and for the said county of El Paso, in

this behalf, duly appointed administrator of the estate of the said P. Perkins, and letters of administration were thereupon issued to the said George M. Irwin; that the said George M. Irwin has thence, hitherto continued to be and still is the duly appointed, qualified and acting administrator of the said estate of the said P. Perkins, deceased; that in the month of November, 1914, the said Irwin, as the said administrator, wrote to affiant offering, as said administrator, to sell to affiant, all of the right, title and interest of the said estate of the said P. Perkins, deceased, in and to the said placer mining claims; that affiant thereupon and in the said month of November, 1914, accepted said offer; that affiant thereupon and with the consent of the said Irwin, as the said administrator, commenced proceedings for the appointment of an administrator of the said estate of the said P. Perkins, deceased, in the Superior Court of the State of California, in and for the County of San Bernardino; that the purpose of the said proceedings was to obtain a proper order from the said Superior Court of the State of California, in and for the said County of San Bernardino, permitting and directing the said administrator of the said estate of the said P. Perkins, deceased, to sell to affiant, or otherwise as the said court, might direct, the said one-eighth interest of the said Perkins' estate in the said placer mining claims; that thereafter and upon the said proceedings so commenced in the said Superior Court of the State of California, in and for the County of San Bernardino, the public administrator of said county of San Bernardino, was

appointed by the said Superior Court as administrator of the said estate of the said P. Perkins, deceased, and letters of administration upon the said estate issued to the said public administrator; that the said public [51] administrator of the said county of San Bernardino thence hitherto has continued to be and still is the duly appointed, qualified and acting administrator, in the state of California, of the estate of the said P. Perkins, deceased; that the said interest of the said P. Perkins in and to said placer mining claims is the only property within the state of California belonging to the estate of said deceased; that it is the intention of affiant to, if the same be possible and legal, through the said Superior Court of the state of California, in and for the said county of San Bernardino, and by its orders and under its direction, to purchase from the said estate of said P. Perkins the said interest in the said placer mining claims, and thus to consummate the agreement heretofore referred to as having been entered into in November, 1914, between affiant and the said Irwin, as the said administrator in the state of Colorado, of the said estate of the said Perkins, deceased;

That on Monday the 14th day of December, 1914, affiant for the first time ascertained the contents of the Bill of Complaint on file herein, and more particularly the allegations therein contained in reference to the conveyance alleged therein to have been made from the said P. Perkins and Sylvia Perkins, his wife, to one F. Kimball, on or about, to wit, the 10th day of June, 1912; that because of the hereinabove referred to correspondence that affiant had had

with the said Irwin, affiant thereupon and on, to wit, said 14th day of December, 1914, sent to the said Irwin by telegraph from the city of Los Angeles, county of Los Angeles, state of California, to the said Irwin, at the city of Colorado Springs, county of El Paso, state of Colorado, a telegram in the words and figures following: [52]

“December 14, 1914.

“Geo. M. Irwin,
Attorney at Law,
Colorado Springs, Colo.

Lee has filed petition for injunction in United States District Court, Southern District of California stop petition asks restraining order enjoining me from going further with forfeiture proceedings of which service of notice on you last September was part stop although complainant is one Carter citizen of Oregon petition is verified by Lee stop he alleges that on June tenth nineteen twelve Perkins and Sylvia Perkins his wife made executed and delivered a deed covering the undivided one-eighth interest concerning which you and I have corresponded and which you have agreed on behalf of Perkins estate to sell to me stop Lee alleges that said deed runs to one F. Kimball as grantee stop Kimball recorded deed November thirtieth this year stop then transferred to present complainant stop in view of *mt* correspondence and agreement with you as administrator of Perkins estate I do not understand Lee's allegations unless deed he has recorded is a forgery or is void for want of consideration or because not legally delivered stop I want to be fully informed

in order to oppose granting of injunction stop I shall therefore be much indebted to you if you will telegraph me immediately and in detail my expense Hotel Alexandria Los Angeles any facts which you know which will clear up present strange situation stop My answer to yours of third instant in mail.

(Signed) JOSEPH K. HUTCHINSON.”

That thereafter on, to wit, said 14th day of December, 1914, affiant received from the said Irwin in reply to the said telegram hereinabove set forth, a telegram in the words and figures following:

“Colorado Springs, Colo., Dec. 14, 1914.

Mr. Joseph K. Hutchinson,

Hotel Alexandria, Los Angeles.

Mrs. Perkins has no recollection of having made deed to Kimball altho she is not sure about it if *so* deed was delivered to Lee for purpose of concluding sale of property and was without consideration. It appears that Lee used Perkins name as one of the locators and he may have secured deed as now appears.

(Signed) GEO. M. IRWIN.”

That thereafter and on, to wit, the said 14th day of December, 1914, and upon the receipt of the said telegram from the said Irwin, affiant again telegraphed to the said Irwin as follows: [53]

“Dec. 14, 1914.

To Geo. M. Irwin, Atty. at Law,

Colorado Springs, Colo.

If I assert in federal court here that deed was without consideration will proof to support my assertion

be available in Colorado Springs.

(Signed) JOSEPH K. HUTCHINSON."

Thereafter and on the 15th day of December, 1914, affiant received from the said Irwin in reply to the second telegram of the said affiant to the said Irwin, a telegram in the words and figures following:

"Colorado Springs, Colo., Dec. 15, 1914.

Mr. Joseph K. Hutchinson,

Hotel Alexandria, Los Angeles, Cal.

Mrs. Perkins would testify that there was no consideration for Kimball deed if there is such deed please advise name notary before whom deed recorded appears to have been acknowledged and whether in El Paso county Colorado also date acknowledgment.

(Signed) GEORGE M. IRWIN."

That because of the information received by affiant from the said Irwin as hereinabove set forth in the said telegrams, affiant is informed, and believes, and therefore alleges the fact to be that the said deed referred to in the Bill of Complaint on file herein, as running from the said P. Perkins and Sylvia Perkins, his wife, to the said F. Kimball, was never delivered to the grantee named therein nor was there any consideration whatsoever therefor;

That the said F. Kimball referred to in the said Bill of Complaint as being the grantee named in the said deed is, and at all times herein mentioned, a resident and citizen of the state of California, and a resident of the city of Oakland, County of Alameda, in said state; that the said Lee, who verified the Bill of Complaint on file herein, and the said

Kimball, have known each other for several years; that the said Kimball [54] does not know nor has he ever known the said P. Perkins and the said Sylvia Perkins, or either of them;

That heretofore, and on or about, to wit: the 14th day of January, 1914, S. Schuler, one of the defendants above named, made, executed, acknowledged and delivered to affiant her certain grant, bargain and sale deed conveying to affiant all the right, title and interest, to wit, an undivided one-eighth interest, of the said defendant Schuler in and to the 175 placer mining claims referred to in the said Bill of Complaint on file herein, said 175 placer mining claims being situate in and upon Searles Borax Lake in the county of San Bernardino, State of California; that thereafter and in said month of January, 1914, said deed was duly recorded in the office of the County Recorder of said county of San Bernardino; that at the time the said defendant Schuler conveyed her said interest in said placer mining claims to affiant the said interest so conveyed stood upon the records of the County Recorder in and for the said county of San Bernardino in the name of the said defendant Schuler and had so stood in her name for more than one year prior to the date of said transfer; that affiant knew at the time of the said conveyance by the said Schuler to him, and had known for a long time prior thereto, that the said interest of the said Schuler so stood upon the records of the County Recorder of the County of San Bernardino, in the name of said Schuler, without any cloud upon or encumbrance against said interest appearing upon the face

of the said records; that affiant relied upon his said knowledge of said records in purchasing said interest from said Schuler, and, pursuant thereto, in taking said deed and conveyance; that at the time of the said conveyance by the said Schuler to affiant, affiant had no knowledge, notice or belief of whatsoever kind or nature of the existence of any claims, rights or equities of whatsoever kind or nature against or related to in any way whatsoever the said interest of the said [55] Schuler, and owned, held or claimed by persons other than the said Schuler; that at the time of the said conveyance by the said Schuler to affiant, affiant did not know nor did he have any knowledge, notice or belief of whatsoever kind or nature, of the existence of the deed and conveyance referred to in the Bill of Complaint on file herein from the said Schuler as grantor to one J. A. Shellito as grantee, whereby the said Schuler transferred and conveyed to the said Shellito all of her right, title and interest in and to said placer mining claims, nor did affiant have any knowledge, notice or belief of any kind or nature whatsoever as to the fact, referred to in the said Bill of Complaint, that the said Schuler had on the 25th day of December, 1913, or at any other time, made, executed, acknowledged and delivered her deed and conveyance to the said Shellito, or had made, executed, acknowledged, and delivered any other deed, or made any other transfer to any other person whomsoever; that affiant took said conveyance from said Schuler as an innocent purchaser and wholly without notice of already existing rights, claims or equities against the interest so con-

veyed by Schuler to affiant, belonging to said Shellito or anyone whomsoever; affiant denies that, at the time of receiving said conveyance, or at any other time, or at all, he was fully, or at all, informed and had full, or any other, knowledge, or was fully, or at all, informed, or had full, or any other knowledge, that the said Schuler had conveyed all, or any portion of, her rights, interests, claims and property, or all, or any of, her rights, or interests, or claims, or property, in said conveyance described to the said J. A. Shellito, or any other person whomsoever, a long time prior to the execution of said conveyance by said Schuler to affiant, or at any other time, or at all;

That for and in consideration of the said conveyance by said Schuler to affiant, and at the time of said conveyance, and as a [56] part thereof, affiant paid to said Schuler, and said Schuler received and accepted from affiant a certain sum of money in cash; that affiant made and completed said purchase from said Schuler of her said interest, in good faith, and without intention to, by the said purchase, defraud or injure anyone whomsoever;

Affiant denies that he took said conveyance from said Schuler in pursuance of a combination and conspiracy, or a combination, or conspiracy, by and between, or by, or between, the defendants in the above-entitled cause, or any of them, and the Foreign Mines & Decelopment Company, the American Trona Company, and the California Trona Company, or the Foreign Mines & Development, or the American Trona Company, or the California Trona Company, wherein and whereby, or wherein, or whereby, the

defendants above named, or any of them, and the said corporations, or any of the said corporations, confederated and combined, or confederated, or combined, together to injure complainant herein, or his predecessors in interest, or either, or any of them, and to deprive and defraud him, or them, or any, or either of them, or deprive, or defraud him, or them, or any, or either of them, or to injure complainant or his predecessors in interest, or either or any of them, or defraud him, or them, or either, or any of them, of all, or any portion of, his, or their, or any of their, right title and interest, or all, or any portion of, his, or their, or any of their, right, or title, or interest in and to, or in or to said placer mining claims;

Affiant denies that the said conveyance by the said Schuler to affiant was made and done or was made, or done, pursuant to and in order to carry out a combination and conspiracy, or a combination, or conspiracy, or pursuant to, or in order to carry out a combination and conspiracy, or a combination, or conspiracy, to injure complainant, or his predecessors in interest, or either, or any of them, and to deprive and defraud him, or them, or either, or any of them, or deprive, or defraud [57] him, or them, or either, or any of them, or to injure complainant, or his predecessors in interest, or any of them, or to deprive, or defraud him, or them, or either, or any of them, of all, or any portion of, his, or their, or any of their, right, title and interest, or all, or any portion of, his, or their, or any of their right, or title, or interest, in and to, or in, or to, said placer mining claims, and each and all of them, or said placer min-

ing claims, or each, or all of them; affiant denies that said conveyance by said Schuler to affiant was made and done, or was made, or done, wholly and totally, or wholly, or totally, without a valuable or other consideration.

Affiant denies that the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company have, or that the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona, has, fraudulently, or in any other manner, attempted to procure the right, title and interest of Pack, one of the defendants above named, or the right, or title, or interest of the said Pack, in and to said placer locations, or in, or to, said placer locations for the said or any other purpose, or using the said interest of the said Pack in and to said locations, or in, or to, said locations, in *wuch* a way and manner, or in such a way, or manner as to destroy all, or any portion of, the complainant's rights and interest, or those of his predecessors in interest, or any, or either of them, or the rights, or interest, of complainant, or his predecessors in interest, or either, or any of them, or any part thereof, or of both or either thereof, therein, and to defraud complainant, or his predecessors in interest, or either, or any of them, out of all, or any portion of, interest in and to, or in, or to, said claims, and each of them, or any of them, or to said claims, or each of them, or any of them, or in such a way, or manner, as to destroy all, or any portion of complainant's rights and interest, or those [58] of his predecessors in

interest, or either, or any of them, or rights, or interest, or any part or portion thereof, or of either of both thereof, therein, or to defraud complainant, or his predecessors in interest, or either, or any of them, out of all, or any portion of, interest in and to, or in, or to, said claims, or any of them; affiant denies that he has been acting as the agent, representative and attorney, or as agent, or as the representative or attorney, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or of the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, in endeavoring to deprive and defraud, or to deprive, or defraud, complainant, or his predecessors in interest, or either, or any of them, of their rights and title, or rights, or title, or any part or portion thereof, or either or both thereof, in and to, or in, or to, said placer mining locations; affiant denies that, under the direction and orders, or under the direction, or orders, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, fraudulently, or in any other manner, he obtained said transfer of the said one-eighth interest in and to, or in, or to, said placer mining claims, from said Schuler, in pursuance to a combination and conspiracy, or in pursuance to a combination, or conspiracy entered into and carried on, or entered into, or carried on, by and between, or by,

or between, said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, and the said defendants herein, or any of them, or by and between, or by, or between, said Foreign Mines & Development Company, American *Traon* Company, and the California Trona Company, [59] or said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, of any of them, or the said defendants herein, or any of them, to injure complainant, or his predecessors in interest, or either, or any of them, and defraud and deprive him, or them, or either, or any of them, or to injure complainant, or his predecessors in interest, or either, or any of them, or defraud him, or them, or any, or either of them, of all, or any portion, of his, or their, or any of their, right, title and interest, or all, or any portion, of, his, or their, or any of their, right, or title, or interest, in and to, or in, or to, said claims, and each of them, or in and to, or in, or to, said claims, or each of them, or that he obtained the said transfer of the said one-eighth interest in and to, or in, or to, said placer mining claims, in pursuance of any combination and conspiracy whatsoever, or in pursuance of any conspiracy whatsoever;

Affiant denies that in further pursuance of said, or any other combination and conspiracy, or said, or any other, combination, or conspiracy, and under the orders and direction, or under the orders, or direc-

tion, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or that in further pursuance of said, or any other, combination and conspiracy, or said, or any other combination, or conspiracy, or under the orders and directions, or under the orders, or directions, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, affiant and his codefendants, or any of them, caused to be served upon the administrator of the estate of complainant's predecessor in interest, to wit, P. Perkins, notice of forfeiture referred to in [60] the Bill of Complaint on file herein; affiant denies that the said transfer of the said one-eighth interest in and to, or in, or to, said claims by the said Schuler to affiant, and the serving of said notice of forfeiture upon the same, or the said transfer of the said one-eighth interest in and to, or in, or to, said claims, by the said Schuler to affiant, or the serving of the said notice of forfeiture upon the said administrator, was all done, or that any part thereof was done, in pursuance to and in the carrying out of, or in pursuance to, or in the carrying out of, a combination and conspiracy, or a conspiracy, entered into by and between, or by, or between, the said Foreign Mines & Development Company, the

American Trona Company, and the California Trona Company, or by and between, or by, or between, the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, and the defendants above named, or any of them, or by and between, or by, or between, the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or by and between, or by, or between; the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or the defendants above named, or any of them; affiant denies that the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, and the defendants above named, or the defendants above named, or any of them, confederated together, for the purpose of injuring the complainant, or his predecessors in interest, or either, or any of them, and depriving and defrauding him, or them, or either or any of them, of, or for the purpose of injuring complainant, or his predecessors in interest, or either, or any of them, or defrauding him, or them, or either, or any of them, of, all, or any portion of his, or their, or any of their, rights, [61] title and interest, or all, or any portion of, his, or their, or any of their, right, or title, or interest, in and to, or in, or to, said placer mining claims;

Affiant denies that the notice of forfeiture was

prepared and served upon said administrator, or was prepared, or served, upon said administrator, pursuant to and in the furtherance of, or pursuant to, or in the furtherance of, such, or any, other combination and conspiracy, or of such, or any other, conspiracy, between the defendants above named, or any of them, and the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or between the defendants above named, or any of them, and the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or all or any of them; affiant denies that neither said Pack, defendant above named, nor any of the defendants above named, or their alleged co-conspirators, are entitled to any contribution from complainant in any sum or amount whatsoever;

And further answering said Bill of Complaint, affiant alleges the complainant has a plain, speedy and adequate remedy at law in the premises by way of payment of complainant's portion of the sum so expended for the performance of assessment work for the year 1911, and the demanding, procurement and recordation of a receipt for such payment as provided by section 1426-0 of the Civil Code of the State of California, and the recordation of such a receipt as effectually removes any cloud arising from the recordation of the affidavit of service of Exhibit "A" as any decree of this court or any other court can or

will; and that affiant is irreparably injured in the event that complainant neglects or refuses to pay his said proportion of said sums in that affiant loses entirely the benefit and effect of his said Notice of [62] Forfeiture through failure to record an affidavit of the service of the same within ninety (90) days after said service, as required by said Section 14260 of the Civil Code of the State of California, affiant being restrained from recording said affidavit of service by order of the above-entitled court.

Affiant denies that while the predecessors of complainant, and the co-locators of said predecessors, or any of them, were engaged in the performance of the annual representation upon said 175 placer claims, or any of them, for the year 1912, or for any other year, they were forcibly prevented or at all prevented, or that any of them were forcibly, or in any other manner, prevented from completing said annual representation upon the whole, or upon any portion of, said 175 placer claims by the Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or by any of them, or by each and all, or by each, or by all, said corporations, or any of them, or by their, or any of their, or each of their, agents, employees, representatives, servants or attorneys; denies that the employees of the predecessors in interest of this plaintiff, or any of them, and the co-locators of the said predecessors in interest, or any of them, or the persons representing the predecessor in interest of plaintiff, and the persons representing the predecessors in interest of plaintiff, or his co-locators, and

his co-locators, or any of them, in doing said, or any other, annual, representation upon said 175 placer claims for the year 1912, were forcibly ejected, or otherwise ejected, and driven from, or forcibly, or otherwise, ejected, or driven from, said placer claims by the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or any of them, or by each, or all of them, or by their, or each of their, agents, representatives, employees, servants or attorneys, or by anyone else whomsoever, or otherwise, or at all, and/or threatened with great or any [63] other physical or any other *violcent*, or injury, or otherwise threatened, in case they, or any of them, return to said placer claims, or any of them, or attempted to place upon said claims, or any of them, any labor or improvements in the annual representation thereof for the year 1912.

JOSEPH K. HUTCHINSON.

Subscribed and sworn to before me this 16 day of December, 1914.

[Seal]

ELMER L. KINCAID,

Notary Public in and for the County of Los Angeles,
State of California. [64]

*In the District Court of the United States, Southern
District of California.*

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER, and
JOSEPH K. HUTCHINSON,

Defendants.

**Affidavit of S. Schuler on Motion to Dissolve Tem-
porary Restraining Order.**

State of California,

County of Los Angeles,—ss.

S. SCHULER, being duly sworn, deposes and says: That she is, and at all times herein mentioned was, a white female citizen of the United States, and a resident and citizen of the state of California, over the age of 21 years, and one of the defendants in the above-entitled cause; that the interests of the said affiant in the subject matter of said cause are joint with and inseparable from the like interests of the other two defendants in this said cause; that affiant makes this affidavit for and on behalf of each and all of the said defendants above named, including affiant;

That affiant has read the Bill of Complaint on file in said cause and knows the contents thereof, and each and every allegation therein contained.

Affiant denies that, on or about the 25th day of December, 1913, or at any other time, or at all, she made,

executed, acknowledged and delivered her deed of conveyance, to one, J. A. Shellito, whereby she transferred and conveyed, or whereby she transferred, or conveyed, to said Shellito, or to anyone else, whomsoever, all, or any portion of her rights, title and interest, or all, or a portion of, her rights, or title, or [65] interest, in and to, or in, or to, said placer mining claims, or that she delivered any deed and conveyance, or deed, or conveyance, to said Shellito, or to anyone else whomsoever;

Affiant alleges that on or about, to wit, the 25th day of December, 1913, affiant made, signed and acknowledged, a deed of conveyance from herself as grantor to one J. A. Shellito as grantee; that said deed covered and would have conveyed, had the same been delivered, all of affiant's right, title and interest in and to said placer mining claims; that said deed was so executed by affiant to be placed in escrow, and not to be delivered to the grantee named therein, until certain conditions to be performed by the said grantee, for and on behalf of affiant, had been fully performed; that many of such conditions were impossible of fulfillment and performance within a period of many months after the date of said deed; that other of the said conditions were to be performed and fulfilled by the said Shellito in favor and on behalf of affiant immediately upon the signing and acknowledgment of said deed; that in and by the terms of said escrow, said deed was to be placed by affiant in the hands of the Security Trust & Savings Bank a corporation, situate in the city of Los Angeles, county of Los Angeles, state of California, to

be by it held as escrow holder, and to be by it delivered to said Shellito, upon the fulfillment and performance of all of the said conditions; that immediately upon the making, signing and acknowledgment of said deed, affiant at the city and county of San Francisco, state of California, handed the said deed to one Henry E. Lee, the person who verified the Bill of Complaint on file herein, upon his promise made to affiant to take the same from the said city and county of San Francisco to the said city of Los Angeles and there to place the said deed in escrow with said Security Trust & Savings Bank;

That affiant is informed and believes, therefore alleges [66] the fact to be, that the said Lee did not keep said promise so made to affiant, and that he did not place, nor has he ever placed, said deed, in escrow with said Security Trust & Savings Bank or elsewhere, pursuant to the terms of said promise made to affiant as aforesaid, or otherwise, or at all;

That none of the conditions which were conditions precedent to the delivery by the said Security Trust & Savings Bank, as escrow holder of said deed for affiant, has ever been fulfilled or performed by the said Shellito, or by any other person whomsoever; that said Lee has never returned said deed to affiant; that affiant does not know where the said deed now is; nor has she known since the date upon which she handed the same to the said Lee, where the said deed, or in whose possession it has been; that someone, of whose identity affiant has not personal knowledge, wholly without affiant's consent or knowledge or authority, recorded, said deed, in the

month of March or April, 1914, in the office of the county recorder of the County of San Bernardino, State of California;

That affiant is informed and believes, and therefore alleges the person who so recorded said deed in the said office of the said county recorder of the said county of San Bernardino, was the said Henry E. Lee;

That affiant has never had any communication whatsoever with or from the said Shellito, by way of complaint, or otherwise, or at all; that the only transaction which the said affiant has ever had with the said Shellito in any way whatsoever was as hereinabove set forth, to wit, the making, signing and acknowledgment of the said deed;

That affiant is informed and believes and therefore alleges the fact to be, that the said Shellito does not now nor has he for many months past, intended or desired to carry out to fulfillment and completion the said transaction, by the performance [67] hereinabove referred to of the said conditions precedent to the delivery by the said, or any other, escrow holder of the said deed;

That thereafter, and on or about, to wit: 14th day of January, 1914, affiant made, executed, acknowledged and delivered to Joseph K. Hutchinson, one of the defendants above named, her certain grant, bargain and sale deed, conveying to the said Hutchinson all the rights, title and interest, to wit: an undivided one-eighth interest of affiant, in and to the said 175 placer mining claims referred to in the Bill of Complaint on file herein, all of which said placer mining

claims are situate in and upon Searles Borax Lake, in the county of San Bernardino, state of California; that at the time affiant conveyed her said interest in said placer mining claims to said Hutchinson, the said interest so conveyed stood upon the records of the county recorder in and for the said county of San Bernardino, in the name of affiant, and had so stood in her name for more than one year prior to the date of said transfer, without any cloud upon, or incumbrance against, said interest, appearing upon the face of said records;

That prior to the said execution of the said deed to said Hutchinson, and after the said making, signing and acknowledgement of the said deed to the said Shellito, affiant stated all of the facts of the case to her attorney, one Ezra W. Decoto, deputy District Attorney of the county of Alameda, state of California, and thereupon and after such statement of all of the facts of the case by affiant to the said Decoto, the said Decoto advised affiant that she could legally, and without liability, or without breach of any duty owed to the said Shellito, or to anyone else, make, execute, acknowledge and deliver the said deed to the said Hutchinson; that thereafter and in the presence of the said Decoto, and acting upon his said advice, the said Schuler, affiant herein, made, executed, acknowledged and delivered the said deed to the said Hutchinson; That thereafter, and in the said month of January, 1914, the said deed was recorded by the said Hutchinson [68] in the office of the county recorder of the county of San Bernardino, state of California;

That at no time prior to the execution and delivery of said deed did the affiant tell said Hutchinson, nor did her said attorney tell said Hutchinson, nor did either affiant or her said attorney in any way whatsoever notify the said Hutchinson that affiant had made, signed and acknowledged said deed to said Shellito, prior thereto, and on or about, to wit: the said 25th day of December, 1913, or at any other time, or at all;

That for and in consideration of the said conveyance by affiant to the said Hutchinson, and at the time of the said conveyance, and as a part thereof, the said Hutchinson, paid to affiant, and affiant received and accepted from said Hutchinson, a certain sum of money in cash; that affiant made and completed said sale to said Hutchinson of her said interest, in good faith, and without any intention to, by the said sale, defraud or injure any one whomsoever;

Affiant denies that she made such conveyance to said Hutchinson in pursuance of a combination and conspiracy, or conspiracy, by and between, or by, or between, the defendants in the above-entitled cause, or any of them, and the Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or the Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, wherein and whereby, or wherein or whereby, the defendants above named, or any of them, and the said corporations, or any of the said corporations, confederated and combined or confederated, or combined together,

to injure the complainant herein, or his predecessors in interest, or either, or any of them, and to deprive and defraud him, or them, or either, or any of them, or to injure the complainant herein, or his predecessors in interest, or either [69] or any of them, or defraud him, or them, or either or any of them, of all, or any portion of, his or their right, title and interest, or all or any portion of, his or their right, or title, or interest in and to, or in or to, said placer mining claims, and each and all of them, or said placer mining claims, or each, or all of them; affiant denies that said conveyance by affiant to the said Hutchinson was made and done, or was made, or done, wholly and totally, or wholly, or totally, without a valuable or other consideration;

Affiant denies that in pursuance of said, or any other, combination and conspiracy, or said, or any other, conspiracy, and under the orders and directions, or under the orders, or directions, of the Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or the said Foreign Mines & Company, or the American Trona Company, or the California Trona Company, or any of them, or that in pursuance of said, or any other, combination and conspiracy, or said, or any other conspiracy, or under the orders and direction, or under the orders, or direction, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, affiant

and her co-defendants, or any of them, caused to be served upon the administrator of the estate of the predecessor in interest of complainant herein, to wit: said P. Perkins, the notice of forfeiture referred to in the Bill of Complaint on file herein; affiant denies that the said transfer of the said interest in and to, or in, or to, said claims by affiant to the said Hutchinson, and the serving of said notice of forfeiture, upon the said administrator, or the said transfer of the said interest in and to or in, or to, the said claims by affiant to the said Hutchinson, or the serving of the said notice of forfeiture upon the said [70] administrator, was all done, or that any part thereof was done, in pursuance to and in the carrying out of, or in pursuance to, or in the carrying out of, the combination and conspiracy, or a conspiracy, entered into by and between, or by, or between, the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or by and between, or by or between, the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or by and between, or by, or between the said Foreign Mines & Development Company, or the American Trona Company; or the California Trona Company, or any of them, and the defendants above named, or any of them, or by and between, or by or between, the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or by and between, or by, or between, the said Foreign Mines & Development Company, or the American Trona

Company, or the California Trona Company, or any of them, or the defendants above named, or any of them; affiant denies that the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, and the defendants above named, or the defendants above named, or any of them, confederated together, for the purpose of injuring the complainant herein, or his predecessors in interest, or either, or any of them, and depriving and defrauding him, or them, or either or any of them, of, or for the purpose of injuring complainant herein, or his predecessors in interest, or either, or any of them, or defrauding him, or them, or either, or any of them, of, all, or any portion of, his or their right, title and interest, or all, or any portion of, his or their right, or title, or interest, in and to, or in, or to, said placer mining claims;

Affiant denies that the said notice of forfeiture was [71] prepared and served upon said administrator, or was prepared or served upon said administrator herein, pursuant to and in the furtherance of, or pursuant to, or in the furtherance of, such or any other, combination and conspiracy, or of such, or any other conspiracy between the defendants above named, or any of them, and the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or between the defendants above named, or any of them, and the said Foreign Mines & Development Company, or

the American Trona Company, or the California Trona Company, or any of them, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or all of them;

Affiant denies that neither said Pack, one of the defendants in the above named, nor any of the defendants above named, or the alleged co-conspirators, or any of them, are entitled to any contribution from complainant in any sum or amount whatsoever;

And further answering the said Bill of Complaint on file herein, affiant alleges that complainant has a plain, speedy and adequate remedy at law, in the premises, by way of payment of plaintiff's proportions of the sum so expended for the performance of assessment work for the years of 1911 and 1912 and the demanding, procurement and recordation of a receipt for such payment, as is provided by section 14260 of the civil code of the State of California; that the recordation of such receipt removes as effectually any cloud which the recordation of the affidavit of service of the notice of forfeiture might constitute, as any decree of this court or any other court can or will; that affiant is irreparably injured in the event that complainant neglects or refuses to pay his said portion of said sums, in that complainant is a non-resident of the state of California, as appears from the Bill of Complaint on file herein, and in that affiant loses entirely the benefit and effect of her said [72] notice of forfeiture through failure to record an affidavit of service within 90 days after

this affidavit on motion to dissolve the temporary Restraining Order heretofore given, made and entered by the above-entitled Court in said cause, for and on behalf of each and all of the said defendants, including affiant;

That affiant has read the Bill of Complaint on file in said cause and knows the contents thereof and each and every allegation therein contained; that all of the facts set forth and attempted to be set forth in said Bill of Complaint are within the personal knowledge of affiant;

That in the year 1910 affiant personally paid out and [74] expended of his own moneys all of the expenses and costs and every expense and cost of locating and recording in the names of E. Thompson, H. C. Fursman, W. Huff, H. A. Baker, R. Waymire, P. Perkins, the alleged predecessor in interest of complainant, D. Smith, and affiant, as set forth in the Bill of Complaint on file herein, the placer mining claims described in said bill, reference to which is hereby made for a more complete description thereof; that said E. Thompson, H. C. Fursman, W. Huff, H. A. Baker, R. Waymire, P. Perkins and D. Smith did not contribute to pay to affiant, nor have they ever contributed or paid to affiant, nor did any of them contribute to pay to affiant nor have any of them ever contributed or paid to affiant, said money so paid out and expended by affiant for said expenses and costs, or any part or portion thereof;

Affiant alleges and affirms that he did pay out and expend of his own moneys during the years 1911 and 1912 the sum of \$5600, in connection with and for

the purpose of procuring the performance of the annual labor upon the 175 placer mining claims hereinafore referred to and more fully described in the Bill of Complaint on file herein, which said sum affiant believes should be properly charged against and constitute a part of the value of, the annual assessment work for the years 1911 and 1912 and which said sum affiant believes should be repaid and contributed to him by his colocators and their or any of their successors in interest and that complainant herein, as the successor in interest of said P. Perkins should reimburse affiant for one-eighth of said sum; that the co-owners of affiant and their successors in interest in the said hereinabove referred to placer mining claims, including complainant, have not contributed or paid to affiant, nor have any of them contributed or paid to affiant, at any time or at all, any part or portion whatsoever of said sum of \$5600 to affiant, except as in the Bill of Complaint set forth; [75] affiant denies that complainant or his predecessor in interest, or any of his colocators or co-owners, expended any money for or performed any representation work in or for the years 1911 and 1912 on said 175 placer mining claims or any thereof heretofore referred to, or that any representation work was done on said 175 claims, or any of them, other than the work done by affiant as hereinabove set out;

Affiant alleges that said sum of \$5600 was the only moneys expended by any of the locators, or owners of said placer mining claims for the purpose of complying, for the said years of 1911 and 1912 with the

requirements of section 2324 of the Revised Statutes of the United States and the amendments thereof, and that no other sums whatsoever have been expended by anyone whomsoever, for the purpose of complying with said section 2324 for the said years of 1911 and 1912 with reference to said 175 placer mining claims;

Affiant denies that he has ever conspired and combined, or conspired, or combined, with the other defendants in this suit and with the Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or with any of them, to injure complainant or complainant's predecessor in interest, or either of them, and to deprive and defraud, or to deprive, or to defraud, complainant and complainant's predecessors in interest or any of them, of all, or any, of the right, title and interest, or right, or title, or interest of complainant and his predecessors in interest, or any of them, in and to, or in, or to, the placer mining claims described in said Bill of Complaint, affiant denies that he caused the notice of Forfeiture, Exhibit "A," to be served upon the administrator of complainant's predecessor in interest, P. Perkins, in pursuance of a, or any combination, and conspiracy, or of a, or any, combination or conspiracy, and under the orders and directions, or under the orders, or under the [76] directions of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or any of them;

Affiant denies that the sum of \$750 or any part of

said sum sued for in the action of "W. W. Colquhoun, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, a copartnership, Thos. W. Pack, Henry E. Lee and T. O. Toland, as individuals, Defendants," and numbered 46604 in the records of the Superior Court of the State of California, in and for the city and county of San Francisco, referred to in the Bill of Complaint on file herein, constitutes part of the amount which affiant and his co-defendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the said Bill of Complaint, to have been paid by affiant in the years 1911 and 1912 for doing the assessment work on the said 175 placer mining claims; affiant alleges that neither said sum of \$750, nor any part of said sum, constitutes a part or portion of the said sum of \$5600 referred to in said Notice of Forfeiture and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of \$3645, or any part of said sum, sued for in the action of "M. A. Varney, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, as individuals, and Thos. W. Pack, Henry E. Lee and T. O. Toland, a copartnership, Defendants," and numbered 46692, in the records of the Superior Court of the State of California, in and for the city and county of San Francisco, referred to in the Bill of Complaint on file herein, constitutes part of the amount which affiant and his codefendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the Bill of Complaint, to have been paid for by affiant in the years 1911 and

1912 for doing the assessment work on said 175 placer mining claims; affiant alleges that neither said sum of \$3645, nor any part thereof, constitutes [77] a part or portion of the said sum of \$5600 referred to in said Notice of Forfeiture, and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of \$750, or any part of said sum sued for in the action of "W. W. Colquhoun, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, and S. Schuler, a Copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as Individuals, Defendants," and numbered 50,723 in the files and records of the Superior Court of the State of California, in and for the City and County of San Francisco, referred to in the Bill of Complaint on file herein, constitutes part of the amount which affiant and his codefendants in the above-entitled cause claim in the Notice of Forfeiture referred to in said Bill of Complaint, to have been paid by affiant in the years 1911 and 1912 for doing the assessment work on the said 175 placer mining claims; affiant alleges that neither said sum of \$750 or any part of said sum, constitutes a portion of the said sum of \$5,600 referred to in said notice of forfeiture, and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of \$3,670, or any part of said sum, sued for in the action of "M. A. Varney, Plaintiff, vs. H. C. Fursman, W. Huff, R. Way-

mire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a Copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as Individuals, Defendants," and numbered 50,724 in the files and records of the Superior Court of the State of California in and for the City and County of San Francisco, referred to in the Bill of Complaint on file herein, constitutes part of the amount which affiant and his codefendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the said Bill of Complaint, to have been [78] paid by affiant in the years 1911 and 1912 for doing the assessment work on the said 175 placer mining claims; affiant alleges that neither said sum of \$3,670 or any part thereof, constitutes a part or portion of the said sum of \$5,600 referred to in said Notice of Forfeiture, and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of \$1443.50, or any part of said sum, sued for in the action of "Raphael Mojica, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, a Copartnership, H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, an Association, and Henry E. Lee, Thomas O. Toland, H. C. Fursman, W. Huff, Rudolph Waymire, P. Perkins, H. A. Baker, E. Thompson, Dudley Smith, Stella Schuler, John Doe, Jane Doe, Richard Roe and Mary Roe, Defendants," and numbered 54,989 in the files and records of the Superior Court of the State of Cali-

fornia, in and for the City and County of San Francisco, referred to in the Bill of Complaint on file herein, constitutes part of the amount which affiant and his codefendants in the above-entitled cause claim in the Notice of Forfeiture referred to in said Bill of Complaint, to have been paid by affiant in the years 1911 and 1912 for doing the assessment work on the said 175 placer mining claims; affiant alleges that neither the sum of \$1443.50, or any part of said sum, constitutes a part or portion of the said sum of \$5,600 referred to in said Notice of Forfeiture and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant further answering the allegation of said Bill of Complaint denies that during the year 1911 and prior to the time any money is claimed to have been expended by affiant in the Notice of Forfeiture hereinabove referred to, or at any other time, or at all, affiant was indebted to the Henry E. Lee referred to [79] in the complaint, the duly authorized agent of complainant's predecessor in interest and his colocators, or the duly authorized agent of complainant's predecessor in interest, of his colocators, or to the said Lee in any other capacity, or as an individual, or personally, or at all, in the sum of \$1,836, or in any other sum, or at all, and denies that the said Lee, acting as such agent for complainant's predecessor in interest and his colocators, or any of them, or that said Lee in any other capacity, or as an individual, or personally, or at all, directed affiant to use and utilize, all of the sum of \$1,836, or any portion thereof, or so much

thereof as might be necessary, in the annual representation of the placer mining claims referred to in said Bill of Complaint for the years 1911 and 1912, or for the year 1911, or for the year 1912, or for any other year, or at all, and denies that affiant agreed with the said Lee that he would so utilize and use, or that he would so utilize or use, said money; affiant denies that the said sum of \$1,836 is and should be, or is or should be, a portion of the money expended by affiant as described in the said Notice of Forfeiture; affiant denies that the said money and indebtedness, or money, or indebtedness, was money due and owing, or was money due or owing, to this complainant's predecessor in interest and his locators, or to this complainant, or to complainant's predecessor in interest, or his locators from affiant; affiant denies that said money should be credited to this complainant and his co-owners, or to this complainant or to his co-owners in proportion to their relative interests in the said 175 placer mining claims; affiant denies that he has at any time whatsoever owed to the said Lee and to complainant, complainant's predecessors in interest and his co-owners, or to said Lee, or to complainant, or to complainant's predecessors in interest, or either of them, or to his co-owners, any sum or sums of money whatsoever; affiant alleges that the said Lee is now, and [80] for a long time prior to the date hereof, has been indebted to affiant in a sum in excess of \$2,000, that said sum is now wholly due, and owing, from the said Lee to affiant and unpaid;

Further answering the allegation above referred

to, affiant alleges that the facts and circumstances relating to the signing and delivery of the written acknowledgment of indebtedness to said Henry E. Lee, in the sum of \$1,836 referred to in said Bill of Complaint are as follows: That at or just prior to the time of the signing and delivery of said written acknowledgment, and several months prior to December, 1911, said Henry E. Lee was indebted to affiant in a large sum, and that said Lee stated that if affiant would endorse said Lee's note in order that said Lee might thereby obtain a loan, said Lee would repay affiant the amount said Lee then stood indebted to affiant, that said Lee then requested affiant to so endorse the promissory note of said Lee in order that said Lee might negotiate the same and procure a loan, that affiant refused to endorse the note of said Lee, whereupon said Lee requested that affiant give said Lee a written acknowledgment of indebtedness from affiant to said Lee, in order that said Lee might obtain a loan on his, said Lee's promissory note secured by an assignment of said written acknowledgment of indebtedness, that said Lee requested that said written acknowledgment of indebtedness be given in some odd sum in order that a possible lender might not suspect that the same had been given as an accommodation, that affiant acceded to the said request of said Lee and gave said Lee a written acknowledgment of indebtedness in the sum of \$1836, for the purpose of enabling said Lee to repay affiant the amount of said Lee's indebtedness to affiant, that affiant received no consideration for said written acknowledgment, either past or present that

said Lee was unable to procure a loan on the security of said written acknowledgment, that the same has never been negotiated and is wholly without [81] consideration of any kind whatsoever, or at all;

That affiant alleges that the sum of \$1,000 alleged in said Bill of Complaint to have been paid by said Henry E. Lee, as the agent and representative of complainant's predecessor in interest and his colocators to affiant for complainant's predecessor in interest and his colocators, was actually paid to affiant on or about the 18th day of January, 1912, that at the time said sum was so paid to affiant, said Lee was indebted to affiant in a large sum, to wit, in a sum in excess of \$1000, that affiant elected to and did treat said payment of said \$1000 as a payment on account of said indebtedness of said Lee to affiant, that affiant does now elect to so treat said payment of said \$100 as a payment on account of the indebtedness of said Lee to affiant, that said sum of \$1000 was not advanced for or on behalf of the complainant's predecessor in interest and his colocators herein or any or either of them, but, so far as this affiant knows and to the best of his knowledge and belief, solely on behalf of said Lee himself;

Affiant alleges on his information and belief that complainant is financially irresponsible and unable to pay his or any proportion of the money expended in doing the assessment work on said claims during the years 1911 and 1912;

Affiant further alleges that complainant has an adequate remedy at law, by way of payment of the complainant's proportion of the sum so expended

for the performance of assessment work for the years 1911 and 1912, and the demanding, procurement and recordation of a receipt for said payment as provided by section 14260 of the Civil Code of the State of California, that the recordation of such receipt as effectually removes any cloud arising from the recordation of the affidavit of service of Exhibit "A," as any decree of this Court, or any other Court, can or will; and that affiant is irreparably injured in the event [82] that complainant neglects or refuses to pay his said proportion of said sum, in that affiant loses entirely the benefit and effect of his said Notice of Forfeiture through failure to record an affidavit of the service of the same within 90 days after said service, as required by section 14260 of the Civil Code of the State of California, affiant being restrained from recording said affidavit of service by order of the above-entitled Court.

THOMAS W. PACK.

Subscribed and sworn to before me this 16th day of December, 1914.

[Seal]

ELMER L. KINCAID,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. B.58-Equity. United States District Court, Southern District of California. (Original.) Cecil C. Carter, Complainant, vs. Thos. W. Pack, Stella Schuler and Joseph K. Hutchinson, Defendants. Affidavits of Joseph K. Hutchinson, Stella Schuler and Thomas W. Pack. Filed Dec. 16, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pursuant to Rule 49, E.

L. Bell, Attorney at Law, 737 Consolidated Realty Bldg., Los Angeles, Cal., is hereby designated as the person on whom to serve papers in this cause. Joseph K. Hutchinson, Attorney for Defendants, San Francisco, Calif. [83]

[Order Continuing Hearing to December 21, 1914.]

At a stated term, to wit, the July Term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the eighteenth day of December, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

B. 58—EQUITY.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK et al.,

Defendants.

This cause coming on this day to be heard on a motion for an order vacating and dissolving a temporary restraining order heretofore made and entered herein; now, on the Court's own motion, it is ordered that this cause be, and the same hereby is continued until Monday, the 21st day of December, 1914, at 9:30 o'clock A. M. [84]

[Order Denying Motion for Order Vacating Temporary Restraining Order etc.]

At a stated term, to wit, the July Term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the twenty-first day of December, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. B. 58—EQUITY.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK et al.,

Defendants.

This cause coming on this day to be heard on defendants' motion for an order vacating and dissolving the temporary restraining order heretofore made, filed and entered herein; John B. Clayberg, Esq., appearing as counsel for complainant; Joseph K. Hutchinson, Esq., appearing as counsel for defendants; I. Benjamin, being present as shorthand reporter of the proceedings, and acting as such; now, on motion of John B. Clayberg, Esq., of counsel for complainant, it is ordered that R. P. Henshall, Esq., who is present in court, be, and he hereby is associated with said John B. Clayberg, Esq., as counsel for complainant; and said motion having been ar-

gued, in connection with the argument of a similar motion in cause No. B. 57—Equity, Cecil C. Carter, Complainant, vs. Thomas W. Pack et al., Defendants, in support thereof, by Joseph K. Hutchinson, Esq., of counsel for defendants, and in opposition thereto by R. P. Henshall, Esq., and John B. Clayberg, Esq., of counsel for complainant; and said cause having been submitted to the Court for its consideration and decision on said motion and the argument thereof; it is now by the Court ordered, that defendants' motion for an order vacating and dissolving the temporary restraining order heretofore made, filed and entered herein be, and the same hereby is denied, [85] and it is further ordered that complainant be, and he hereby is enjoined from making, executing or delivering conveyance, or in any way conveying or disposing of title to the property involved in this cause during the pendency of this proceeding, and until the final determination of this cause on its merits, counsel for complainant to prepare an appropriate draft of order in accordance herewith for signature and entry. [86]

*In the District Court of the United States, in and
for the Southern District of California, Southern
Division.*

No. B. 58—EQUITY.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

**Order Denying Motion to Dissolve Temporary
Restraining Order, etc.**

BE IT REMEMBERED, that, on the 21st day of December, 1914, at 9:30 o'clock A. M. of said day, at the courtroom of the above-entitled court, in the City of Los Angeles, State of California, pursuant to notice duly given, the motion of the defendants Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, in the above-entitled proceeding for an order vacating and dissolving the temporary restraining order therefore and on the 15th day of December, 1914, issued in the above-entitled proceeding, came on regularly for hearing and was heard upon all the papers, records and proceedings in said above-entitled proceeding the defendants' notice of motion and upon the affidavits of Joseph K. Hutchinson, Thomas W. Pack and Stella Schuler on file in the above-entitled action, said defendants appearing by Joseph K. Hutchinson, Esq., their solicitor, and the complainant appearing by J. B. Clayberg,

Esq., and R. P. Henshall, Esq., his solicitors, whereupon said motion was argued and after being duly considered by the Court

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said motion [87] for an order vacating and dissolving the temporary restraining order heretofore and on the 15th day of December, 1914, issued in the above-entitled proceeding, be, and the same is, denied. It is further ordered, adjudged and decreed that the complainant herein, his attorneys, agents and representatives, or any, or either of them be, and they are, and each of them is hereby enjoined and restrained from making, executing or delivering any deed or other conveyance whatsoever or at all of the placer mining claims described in the Bill of Complaint on file herein, or any of said claims, or from in any way conveying his, or any of his, interests in and to said claims until the final determination of this proceeding or the further order of this Court.

Dated Los Angeles, Cal., December 21, 1914.

BENJAMIN F. BLEDSOE,
Judge.

[Endorsed]: No. B. 58—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. Cecil C. Carter, Complainant, vs. Thomas W. Pack et al., Defendants. Order Denying Motion to Dissolve Temporary Restraining Order, etc. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K.

Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal. [88]

In the District Court of the United States, in and for the Southern District of California.

No. B. 58—Equity.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Assignment of Error.

NOW COME THOMAS W. PACK, STELLA SCHULER and JOSEPH K. HUTCHINSON, defendants above named, and make and file this their assignment of error:

I.

That the District Court of the United States, in and for the Southern District of California, erred in giving, making and entering its order of December 21, 1914, in the above-entitled proceeding, which said order denied the motion of the above-named defendants for an order vacating and dissolving the temporary restraining order theretofore and on the 15th day of December, 1914, issued in the above-entitled proceeding.

II.

That the District Court of the United States, in and for the Southern District of California, erred

in giving, making and entering its order of December 21, 1914, in the above-entitled proceeding, wherein and whereby said Court refused to dissolve the temporary restraining order theretofore and on the 15th day of December, 1914, issued in the above-entitled proceeding.

San Francisco, Cal., December 23, 1914.

CHARLES W. SLACK,
JOSEPH K. HUTCHINSON,
Solicitors for Defendants. [89]

[Endorsed]: No. B. 58—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. Cecil C. Carter, Complainant, vs. Thomas W. Pack et al., Defendants. Assignment of Error. (Order of Dec. 21, 1914.) Original. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco Cal. [90]

*In the District Court of the United States, in and for
the Southern District of California.*

No. B. 58—Equity.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Petition for an Order Allowing an Appeal.

The above-named defendants, Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, conceiving themselves aggrieved by the order entered on the 21st day of December, 1914, in the above-entitled proceeding, which said order denied the motion of the above-named defendants for an order vacating and dissolving the temporary restraining order theretofore and on the 15th day of December, 1914, issued in the above-entitled proceeding, do, and each of them does, hereby appeal from said order to the United States Circuit Court of Appeals, for the Ninth Circuit, and they pray, and each of them prays, that this, their appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals, for the Ninth Circuit.

San Francisco, Cal., December 21, 1914.

CHARLES W. SLACK,
JOSEPH K. HUTCHINSON,
Solicitors for Defendants.

And now, to wit: on December 26, 1914, it is ordered that the foregoing appeal be allowed as prayed for, upon giving bond on appeal in sum of \$250.00.

BENJAMIN F. BLEDSOE,
District Judge. [91]

[Endorsed]: No. B. 59—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. Cecil C.

Carter, Complainant, vs. Thomas W. Pack et al., Defendants. Petition for and Order Allowing Appeal. (Order of Dec. 21, 1914.) Original. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal. [92]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. B. 58—Equity.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS :

That United States Fidelity & Guaranty Company, a corporation, duly incorporated under and by virtue of the laws of the State of Maryland and authorized by its charter and by law to become sole surety on bonds and undertakings, is held and firmly bound unto Cecil C. Carter in the full and just sum of Two Hundred Fifty Dollars (\$250.00) lawful money of the United States, to be paid to the said Cecil C. Carter, his executors, administrators or assigns; to which payment the said United States Fidelity & Guaranty Company binds itself by these presents.

In Witness Whereof, the United States Fidelity & Guaranty Company has caused these presents to be executed by its duly authorized attorney in fact and has caused these presents to be sealed with the seal of the United States Fidelity & Guaranty Company on this 26th day of December in the year of our Lord one thousand nine hundred and fourteen.

Whereas, lately, at a District Court of the United States for the Southern District of California, Southern Division, in a suit depending in said Court between said Cecil C. Carter as [93] complainant and Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, as defendants, an order was given on the 21st day of December, 1914, in the above-entitled proceeding, which said order denied the motion of the above-named defendants for an order vacating and dissolving the temporary restraining order theretofore and on the 15th day of December, 1914, issued in the above entitled proceeding, and the said Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, having obtained or being about to obtain an order allowing an appeal to reverse the said order in the aforesaid suit and a citation directed to the said Cecil C. Carter citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty days from the date thereof;

Now the condition of the above obligation is such that if the said Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson shall (Seal) prosecute and appeal to effect, and answer F. M. K. all damages and costs if they fail to make N. P.

their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

The premium on this bond is 500.

W. H. SCHRODER,

Atty. in Fact.

(Cancelled Internal Revenue Stamps 21½¢.)

[Corporate Seal]

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY,

By W. H. SCHRODER,

Its Attorney in Fact.

The addition of the words “and” and “all” in line 17 hereof is made with full authority of the United States Fidelity and Guaranty Company.

W. H. SCHRODER,

Atty. in Fact.

State of California,
County of Los Angeles,—ss.

On this 26th day of December, in the year one thousand nine hundred and fourteen, before me, Frank M. Kelsey, a Notary Public in and for said County and State, residing therein, duly [94] commissioned and sworn, personally appeared W. H. Schroder, known to me to be the duly authorized attorney in fact of THE UNITED STATES FIDELITY AND GUARANTY COMPANY, and the same person whose name is subscribed to the within instrument as the attorney in fact of said Company, and the said W. H. Schroder duly acknowledged to me that he subscribed the name of THE UNITED STATES FIDELITY AND GUARANTY COM-

PANY thereto as Principal and his own name as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

FRANK M. KELSEY,

Notary Public in and for Los Angeles County, State of California.

[Endorsed]: No. B. 58—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. Cecil C. Carter, Complainant, vs. Thomas W. Pack et al., Defendants. Undertaking on Appeal. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Form and Sufficiency of Surety to within undertaking approved this 26th day of December, 1914. Benjamin F. Bledsoe, Judge. Charles W. Slack, Joseph K. Hutchinson, Solicitors for defendants, 923 First National Bank Bldg., San Francisco, Cal. [95]

In the District Court of the United States, in and for the Southern District of California.

No. B. 58—Equity.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Praecipe for Record on Appeal.

To the Clerk of the District Court of the United States, in and for the Southern District of California, Southern Division:

Sir:—

You are hereby instructed to prepare a certified copy of the record in the above-entitled proceeding for use upon an appeal from the order heretofore given, made and entered in the above-entitled proceeding on the 21st day of December, 1914, which said order denied the motion of the above-named defendants for an order vacating and dissolving the temporary restraining order therefore and on the 15th day of December, 1914, issued in the above-entitled proceeding; said record will be made up of the following papers, records and proceedings in the above-entitled proceeding:

The bill of complaint therein;

The temporary restraining order and order to show cause given, made and entered therein on the 15th day of December, 1914;

The notice of motion of the above-named defendants for an order vacating and dissolving the temporary restraining order theretofore and on the 15th day of December, 1914, issued in the above-entitled action, which said notice of motion was [96] filed and is marked as filed in the above-entitled proceeding on the 16th day of December, 1914.

The affidavit of Thomas W. Pack, one of the defendants above named, which said affidavit is referred to in said notice of motion last above named, and

which said affidavit was used upon the hearing of said motion last above referred to, and which said affidavit was filed and is marked as filed in the above-entitled proceeding on the 16th day of December, 1914;

The affidavit of Stella Schuler, one of the defendants above named, which said affidavit is referred to in said notice of motion last above named, and which said affidavit was used upon the hearing of the motion just referred to, and which said affidavit was filed and is marked as filed in the above-entitled proceeding on the 16th day of December, 1914;

The affidavit of Joseph K. Hutchinson, one of the defendants above named, which said affidavit is referred to in said notice of motion last above named, and which said affidavit was used upon the hearing of said motion just referred to, and which said affidavit is filed and is marked as filed in the above-entitled proceeding on the 16th day of December, 1914;

The minute order of the above-entitled Court continuing said motion last above named from the 18th day of December, 1914, to the 21st day of December, 1914, at 9:30 o'clock A. M.;

The order given, made and entered in the above-entitled proceeding on the 21st day of December, 1914, which said order denied said motion for an order vacating and dissolving the temporary restraining order theretofore and on the 15th day of December, 1914, issued in the above-entitled proceeding, and [97] which said order refused to dissolve the temporary restraining order last above mentioned;

The, or any, Opinion of the above-entitled Court in the above-entitled proceeding given upon the making of the order denying said motion for an order vacating and dissolving the temporary restraining order above referred to;

The assignment of error of the above-named defendants filed with their petition for an order allowing the appeal above specified and referred to;

You will forthwith make up your certified copy of the foregoing papers and transmit the same, with the original petition for an order allowing an appeal and the citation issued thereon, with the return of the service of said citation, to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California.

San Francisco, Cal., December 23, 1914.

CHARLES W. SLACK,
JOSEPH K. HUTCHINSON,
Solicitors for Defendants.

Service of the within praecipe for record on appeal this 23d day of December, 1914, is hereby admitted.

H. L. CLAYBERG.
CLAYBERG & WHITMORE,
Attorneys for Complainant.

[Endorsed]: No. B. 58—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. Cecil C. Carter, Complainant, vs. Thomas W. Pack et al., Defendants. Praecipe for Record upon Appeal. (Order of Dec. 21, 1914). Original. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K.

Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal. [98]

**[Certificate of Clerk, U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. B. 58—EQUITY.

CECIL C. CARTER,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing ninety-eight (98) typewritten pages, numbered from 1 to 98 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the bill of complaint, temporary restraining order and order to show cause, notice of motion of defendants for order vacating and dissolving temporary restraining order, affidavits of Joseph K. Hutchinson, S. Schuler and Thomas W. Pack, respectively, minute orders of December 18 and 21, 1914, respectively, order denying motion for order vacating and dissolving temporary restraining order, assignment of error, petition for and order allowing appeal,

undertaking on appeal, and praecipe for transcript of record on appeal in the above and therein-entitled action; and I do further certify that the above constitute the record on appeal in said action as specified in the said praecipe for transcript of record on appeal, filed on behalf of the appellants [99] in said action.

I do further certify that the cost of said transcript is \$64.50, the amount whereof has been paid me by Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, the appellants in said action.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 30th day of December, in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence, the one hundred and thirty-ninth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

[Ten Cents Internal Revenue Stamp. Canceled Dec. 30, 1914. Wm. M. V. D.] [100]

[Endorsed]: No. 2538. United States Circuit Court of Appeals for the Ninth Circuit. Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, Appellants, vs. Cecil C. Carter, Appellee. Transcript of Record. Upon Appeal from the United

States District Court for the Southern District of
California, Southern Division.

Filed December 31, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.